

# **The Qur'an** **Women** **and Modern Society**

**Second Edition**

**Asghar Ali Engineer**



# **The Qur'an Women and Modern Society**

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***The Quran, Women and Modern Society***

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*Dedicated to  
my mother  
Mariyambai Sheikh Qurban Husain  
and my wife Sakina Engineer.  
Their inspiration is a  
great asset to me.*

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## INTRODUCTION

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The question of Muslim women's rights continue to occupy centre stage throughout the world. This question will assume ever-greater importance in coming days. The main reason for this is increasing education and awareness among Muslim women in all Muslim countries. Modernisation is also having its impact. Moreover women are getting increasingly drawn into job market thus becoming independent of their fathers and husbands.

No country is exception to this process. Even in Saudi Arabia where women are under strict control, this process is on and Saudi women too are debating issue of their rights and are demanding more and more freedom.

Recently there was a conference in Madina, in Saudi Arabia, the second holiest city of Islam wherein both men and women participated to debate women's rights. This was the third conference of its kind. Various issues including participation in work and representation in public institution came under discussion in this conference. But Saudi women were not satisfied even with such conference. They felt it is men who did most of the talking and women did not get opportunity and women were not properly represented.

The debate about women's rights and issues continue in the Saudi press as well as in the media in other Arab countries. Thus in an article in the leading English paper of the Middle East, *The Arab News* of 16<sup>th</sup> July 2004, Mody al-Khalaf writes, "For some time now, there has been a lot of talk, nationally and even internationally, about women's rights in Saudi Arabia ... Westerners often make the assumption that we are totally deprived of all rights. Saudis, mostly conservatives terrified of any change, think that Saudi women enjoy all the rights they are entitled to by Islamic law. Both groups, of course, are wrong."

This article discusses the trauma of Mona, a Saudi divorcee, and her struggle to lead a dignified life and give the best possible education to her three children. The story of how Mona successfully struggled for her rights and for her children's rights is a truly inspiring one. And that too in the Saudi Kingdom. This clearly shows that the Saudi women who are thought to be mere prisoners in the hands of men are not so. They too fight for their rights and dignified existence.

An interesting survey was conducted in the Saudi Kingdom for the work participation of women. The study revealed that Saudi women can get involved in six major fields: worship, family duties, education, management in the private sector, as well as the public sector, and social services.

The study conducted by Khaled al-Baloush, deputy director of the Saudi management Association in Jeddah and in which 2,550 Saudi women had been surveyed, said that 47 per cent (1,181 of the sample) of Saudi women opined that they are just as capable at work as men, sometimes even better, while 53 per cent of the respondents said they can be more efficient for many reasons other than physical ability, which was the only aspect covered in the study.

In June 2004 a conference "Challenging Limitations: The Redefinition of Roles for Women in the GCC" was organised by the London Middle East Institute (LMEI) at SOAS with support from the Saudi Embassy in London, the Kuwait-British Friendship Society and Abdul Salam Al-Awadi. One of the keynote speakers, Princess Lulwah al-Faisal, vice chairwoman and general supervisor of Dar Al-Hanan School and Effat College Board of Trustees, gave a comprehensive overview of the remarkable growth in female education in Saudi Arabia and said Saudi women pioneers famous for their civic roles, are now standing to play an important consultative role.

She said that the basic challenges faced by Saudi women include the rapid rate of population growth of 3.1 per cent a year, the mismatch between education and demands of job, and the social awareness of women's rights in Islam. Princess Lulwah noted that technology is an area that is particularly appropriate for Saudi women, and she expressed the hope that this will be adequately reflected in academic institutions.



The conference speakers included two dynamic Saudi women, Dr Fawziah Bakr Al-Bakr, associate professor at the college of education, King Saudi University, and Dr Hayat Sindi who was the first female Saudi scientist to receive a doctorate in biotechnology from the University of Cambridge. Dr Sindi, in her paper, entitled "A Life Sentence" described the many obstacles she had to overcome in her passage from being a girl growing up in Makkah to obtaining a masters degree from London University and a doctorate at Cambridge.

Dr Sindi, who is the holder of many awards, stressed the importance of self-belief. Dr Al Bakr took the audience to a wide-ranging tour of girls' education and the role of women in the labour force in a paper full of information and statistics. She ended by outlining an eight-point plan to encourage women's role in business and economy and made number of recommendations.

All these developments among Saudi women are indicative of the winds of change blowing in the Muslim world. It is no longer possible to deprive Muslim women of their Islamic and human rights. Even the Saudi society can no longer deal with women the way it used to deal in earlier times. Though the struggle ahead is by no means easy and smooth, yet signs of change are unmistakable. The patriarchal societies denied women their Qur'anic rights so far. The Qur'an unmistakably declared gender equality fourteen hundred years ago but Muslim men denied it to them, even elementary rights, until today.

There is serious misconception about finality of the Shariah law in the Islamic world. The evolution of the Shari'ah law has been a process and it kept on evolving for centuries after the death of the Holy Prophet. The early doctors of law who founded various schools of Shari'ah like Imam Hanbal, Imam Malik, Imam Abu Hanifa and Imam Shafi'i, never thought that their opinions are final and binding on coming generations of Muslims. Imam Malik did not allow the Abbasid Caliph to prescribe his *Magnum Opus Muwatta* to be prescribed for all Muslims. He maintained that he would not like it to be imposed on all Muslims. They can have their own opinion.

But later generations started following these doctors of law blindly and mechanically as if it was divine. Now ordinary Muslims following these doctors and the 'ulama belonging to these schools do consider opinions expressed by these doctors of law as

final and consider it a sin to challenge the finality of their opinion. But all great Islamic thinkers have maintained that these opinions cannot be treated as final.

No one can doubt the scholarship and greatness of their learning. Still they were humans and product of their own time. The Qur'an, a divinely revealed text gives principles, values and guidelines. One has to develop detailed rules in the light of these principles, values and guidelines. Fundamental values are divine but instrumental values to implement them in given conditions, are not.

No law developed by learned men of one generation can be binding on people of subsequent generations. The Qur'anic verses were interpreted differently by different theologians of the same generation, then how can subsequent generations forfeit their rights to interpret Qur'anic verses according to their needs and requirements. May be throughout medieval ages no need was felt to reinterpret and develop Shari'ah law further after the learned men codified it as medieval society remained almost static for several centuries.

But from the 19<sup>th</sup> century, revolutionary changes in social and economic structure began to take place and new generations of Muslims began to feel great need for fresh thinking on issues of Shari'ah law. A great struggle began in almost all Muslim countries. Napoleon's invasion on Egypt brought it under French influence and Egyptian society became the hub for intellectual debates on women's rights. Many books were written out of which *Al-Mara't al-Muslimah* (The Muslim Woman) was the most stimulating.

In India too, after the British rule was consolidated in nineteenth century, many Muslims scholars like Sir Syed, Maulvi Mumtaz Ali Khan, Justice Amir Ali, Maulvi Chiragh Ali and others began to re-think on Shari'ah laws pertaining to women's rights. Sir Syed himself made insightful comments in his commentary of the Qur'an pertaining to verses on women and their rights.

Maulvi Mumtaz Ali Khan, a close colleague of Sir Syed wrote a book *Huququn Niswan* (Rights of Women) which boldly advocated equal rights for man and woman at a time when women were not even allowed to come out of their houses and in their houses they were confined to *zanankhana* ie women's compartment. Even Sir Syed was disturbed by such a bold venture and

advised the Maulvi not to publish it as it would cause great stir among Muslims and opposition to his mission of spreading modern education would assume greater fury. However, Mumtaz Ali Khan did not accept Sir Syed's advice and published the book.

Maulvi Chiragh Ali also advocated changes in the Muslim law so that women could get their Islamic rights which have been denied them for centuries. Thus modernity and modern changes directly impinged on the Muslim thinking and some scholars began to advocate changes in the traditional Shari'ah law. But ■ far only enlightened men were advocating rights of Muslim women. Women were still deprived of modern education and confined to their homes and *zanankhana* in their homes.

It was only in later part of the twentieth century that Muslim women began to go to schools and colleges. Also, the educational institutions were dominated by ■ who often thought that a woman's right place was in their homes and this was repeatedly injected into their minds. Naturally the women also thought along these lines only. But it was the post-independence situation which began to bring fundamental change in the attitudes of Muslim women.

The Indian Constitution gave all its citizens, including women, the right to vote and politicians had to cultivate women voters as well. Thus the democratic discourse in the country created greater awareness among all women, including Muslim women. Also, from seventies onwards more and more NGOs advocating women's rights came into existence and the Muslim women who were suffering also formed their own NGOs. The NGO culture certainly helped women's cause.

In Muslim countries too more and more women are getting educated and a new awareness is fast developing. Today even in Saudi Arabia there are more girls than boys, even at the university level. The oil revolution forced Arab governments to open more and more educational institutions. That is why the women in conservative kingdom like Saudi Arabia, as pointed out above, are no longer content with their old situation and are demanding equality with men.

In Kuwait women were not allowed to take part in the political process and could not vote. But many university-educated women were demanding right to vote during eighties. However, it was denied to them. When Kuwait was invaded by Iraq in 1990

and resistance movement began, the women participated in the resistance movement on condition that they will be enfranchised. The ruling dynasty of Kuwait promised enfranchisement of Kuwaiti women.

However, after Kuwait was liberated ■ such law was passed for a long time. It was only after great deal of agitation by educated Kuwaiti women that the ruling Sheikh issued an ordinance giving women right to vote but it was voted out in the parliament which was dominated by conservative men. Nevertheless, the Kuwaiti women did not give up and now at last a bill is being introduced to empower Kuwaiti women to vote. One hopes the bill will be passed. This again shows that educated women in Muslim countries are agitating for their rights and nothing will be gained without such struggles.

Needless to say, there is still a long way to go. There are serious inequalities between the two sexes in Muslim societies. Though Malaysia is ■ highly developed country among Muslim countries yet highly conservative views prevail as far ■ women's rights are concerned. The Sisters in Islam is an NGO in Malaysia which is struggling for women's rights. It is pressing Malaysian government for progressive legislation for women. They ■ aspiring, and rightly so, for equal rights. However, they have to face tough opposition from highly conservative 'ulama. In certain states like Kelantan the conservative Muslim party is in power and it has introduced *Hudud* laws (Islamic laws for adultery, etc) which are highly loaded against women. The Malaysian women have a long way to go.

In Indonesia too after democratisation of political regime and end of Suharto's dictatorship, a movement for rights of women has gathered momentum. In Indonesia the rate of literacy among women is quite high. There are several institutions catering to women's education, including Islamic universities and other Islamic institutions. These educated women are demanding better status. Books on rights of women are in great demand here. Many women are working for PhD degrees on rights of women.

In Pakistan and Bangladesh women have succeeded in forcing authorities to bring about certain necessary changes like abolition of triple divorce and restriction of polygamy. The then President Ayub Khan had promulgated an ordinance in 1961 known as Muslim Family Law Ordinance, which ushered in these measures.



Bangladesh retained them after cessation from Pakistan in 1971 and Zia-ul-Haq's attempts to abolish the ordinance during the eighties, when Islamisation of Pakistani state began, did not succeed. The women of Pakistan resisted abolition of the ordinance. It is thus in force even today.

However, the Hudud ordinance promulgated by Zia-ul-Haq is causing severe problems for Muslim women in Pakistan. There is some pressure on the Musharraf government though there is fierce opposition to it from the 'ulama.

In India Muslim women are suffering because of lack of any reform in the Islamic law. Here the main obstacle is the minority status of Muslim community. Any move for change is strongly resisted both by the 'ulama as well the political leadership saying it amounts to interfering in religious freedom of minorities. Article 25 of the Constitution allows all to profess, practice and propagate one's religion. The Personal Law, it is maintained, is part of religion and cannot be interfered with. It is true that Shari'ah law is part of religion and government cannot interfere with it and this has stalled all reforms.

Even the Supreme Court judgement of 1985 in the famous Shah Bano case had to be reversed by the then Rajiv Gandhi government under pressure from Muslims. It caused great setback for Muslim women's movement in India. The reversal of the Supreme Court judgement caused great resentment among non-Muslims and gave impetus to majority communalism. The secularists otherwise quite sympathetic to the Muslim cause, were also greatly upset.

The Shah Bano movement is an indicator of momentous difficulties in bringing about any change in favour of Muslim women. However, there is increasing pressure on the Muslim Personal Law Board (MPLB) to effect certain essential changes like abolition of triple divorce. There ■ some liberal 'ulama but they are greatly constrained by the conservative 'ulama who are in majority.

The MPLB consists of Muslims of different sects, Sunnis, Shi'as, Bohras, Deobandis, Ahl-e-Hadis and so on. Different sects take different positions and it becomes more complicated to bring about any change. For example, recently the MPLB announced that it was going to consider abolition of triple talaq in its Kanpur session in July 2004. The Barelvi 'ulama from Mumbai belonging



to Raza Academy immediately threatened to launch an agitation if the MPLB touched the issue of triple talaq. The MPLB had to retrace its step and had to announce that it had ■ intention to abolish triple talaq. The whole issue was thus shelved once again.

Thus there are two main obstacles for any change in the Muslim Personal Law in respect of women: 1) conservatism of some 'ulama and 2) political competition for leadership of Muslims. If one set of 'ulama give in to progressive change, their leadership is immediately threatened by conservative 'ulama. Thus under pressure from conservatives the comparatively liberal ones retract. This happened on 13 September 2004 also. The vice president of MPLB, Maulana Kalbe Sadiq, announced in a press conference that the Board will promote family planning among Muslims in view of little higher rate of growth of Muslim population. He gave example of Iran where zero rate of growth has been achieved. If the Iranian Muslims can achieve zero rate of growth under the rule of 'ulama why can't Indian Muslims slow down their growth under a secular set up?

However, the president of MPLB Maulana Hasan Rabe' Nadwi immediately announced that this is not the stand of MPLB but only personal views of Maulana Kalbe Sadiq and he is entitled to his views. Thus any progressive reform suggested by ■ section of 'ulama is resisted by another section and reforms are thus stalled. It is only increasing pressure from Muslim women which will create climate for change.

The conception among common Muslims that the Shari'ah law is divine and immutable has to change for any reform. Thus progressive Muslim intellectuals committed to women's rights have to educate the Muslim masses that every succeeding generation of Muslims, as pointed out above, has right to reinterpret Shari'ah law according to their needs. The Shari'ah law is not the body of static laws, but a corpus of dynamic laws creatively responding to changing times.

What was evolved by the Islamic jurists in early centuries was in response to the socio-political needs of the time. The Qur'an provided the ideal of equal rights of men and women but the society then could not cherish this ideal and the then doctors of law had to respond to their socio-political needs by watering down the Qur'anic ideal of equality of gender by invoking certain *ahadith* of the Holy Prophet or by resorting to the institutions of *ijma'* and

*qiyas* (ie consensus and analogical reasoning). Both *ijma'* and *qiyas* are human institutions and had to be developed to meet the needs of the time. These same institutions can be used for responding to the present needs.

This is the only way of keeping the Islamic law relevant and for upholding the Qur'anic ideals of justice and gender equality. It is from this point of view that we have stated positions and views of various authorities in this book like Muhammad 'Abduh of Egypt, Sir Syed and Maulvi Mumtaz Ali Khan of India, Maulana Umar Ahmed Usmani of Pakistan and others to support the case for reform and change. The author's appeal to Muslims in general, and Muslim 'ulama in particular, is to reflect dispassionately and try to implement the Qur'anic ideals and this is right time to do so.

# 1

## TASHRI' (PROCESS OF LAW MAKING) IN ISLAM

---

The *shari'ah* plays a very important role in Islam. In fact, it is the key to the practice of Islam and it is considered as the manifestation of Islamic beliefs in practice. For one to be a true Muslim three things are needed, (1) *Iqrar b'il lisan* (acceptance of Islam by one's tongue); (2) *tasdiq b'il janan* (endorsement by heart) and (3) '*Amal b'il arkan* (practice through one's limbs). Of these three the third one, ie, '*amal b'il arkan* concerns the *shari'ah* which is the body of Islamic jurisprudence. It is often, though mistakenly, considered immutable by the believing Muslims. As for other beliefs, the Muslims are divided into numerous *madhahib* (sects and schools of jurisprudence) and this division has persisted throughout Islamic history. These differences could not and cannot be reconciled.

Legislation in most of the Islamic countries is usually based on *shari'ah* and such legislation has created a great deal of controversy. The issues pertaining to personal laws like marriage, divorce, maintenance on one hand, and, the issues pertaining to criminal laws like chopping off hands, stoning to death, etc, have been highly controversial. Many orthodox Muslims and the '*ulama* maintain that no changes can be made in these laws as they are divine and hence immutable. The modernist Muslims, on the other hand, feel that there is a need to rethink these issues though within the Islamic frame-work. The debate and controversies between these two sections of Muslims go on. Many non-Muslims too, often tend to express their opinion on the matter.

Certain issues pertaining to women like polygamy and divorce have become highly controversial and not only Muslims but also a large number of non-Muslims too, express their opinion on these controversial matters. Similarly, in the sphere of criminal

law, punishments like chopping off of hands and stoning adulterers to death have acquired controversial overtones. It is, therefore, highly necessary to understand the nature of these controversies and the process of evolution of the *shari'ah* in Islam. Should these laws change or remain immutable? Are these laws really immutable or subject to change? What are the sources of legislation in Islam? Are all Muslims in agreement on these sources or are there differences among them? These vital questions must be answered.

Only by throwing a detailed light on some of these questions we can understand the true significance of *tashri'* (law making in Islam). The important sources of legislation in Sunni Islam are the Qur'an, *hadith*, *qiyas* (analogy) and *ijma'* (consensus) and the Qur'an, *hadith* and the authority of Imam in the Shia Islam. Before we throw more light on each of these factors listed above, we would like to emphasise the fact that what is known today as *shari'ah* did not come into existence during the Prophet's own lifetime. It took more than a century for the Islamic *corpus juris* to evolve and the efforts of many a jurist. Even the *shari'ah* in the Shia Islam began to be codified on the basis of what Imam J'afar al-Sadiq had pronounced on various matters pertaining to law. And Imam J'afar too lived hundred and fifty years after the hijrah of the Prophet from Mecca to Medina. The codification of *shari'ah* by different jurists after a lapse of more than a century since the death of the Prophet has its own problems and important bearing on the evolution of the *shari'ah*. It is an important part of our discussion.

It is also important for our discussion that the concept of *shari'ah* itself evolved much later. It hardly existed in the first few centuries of Islamic history. If at all the jurists use this term (ie, *shari'ah*) they use it in passing in the earlier centuries or they use other forms from the root *sh-r'*. In Imam Abu Hanifah's *al-Fiqh al-Akbar* even the root *sh-r'* does not occur. We do not find the concept of *shari'ah* as the central concept even in al-Ash'ari's writings particularly his *al-Fiqh al-Akbar* this root cannot be traced. In the Qur'an the word *shari'ah* occurs only once (45:18). It says, "Then we made thee follow a path (*shari'atin*) in the matter (of religion), so follow it, and follow not the low desires of those who know not."

This word also occurs in the Qur'an in its different forms like *shir'a*, *shur'an*, *shara'a*, etc. According to Imam Raghib, an

authority on the Qur'anic lexicography, *al-shar'a* means 'straight and clear path' and a clear path is also called *shar'un*, *shir'un* and *shari'atun*. And, as pointed out before, the Qur'an uses all these terms. However, even the Qur'an does not use the term *shari'ah* in the sense of *corpus juris* as it later came to mean. We do not find mention of the word *shari'ah* in this ■■■■ except casually even in the writings of great Islamic thinkers, jurists and theologians like al-Ash'ari, Ibn Babawayh, al-Baghdadi, al-Juwayni, al-Ghazzali, al-Nasafi, al-Shahrastani, etc. Thus it will be seen that the word *shari'ah* in the sense in which we use it today (ie, the body of Islamic laws) was not prevalent or widespread until at least the sixth century of Islam. Until then the Islamic thinkers did not frequently use this concept. It came to be much widely used after the classical or the formative period of Islam.

Well, here in this chapter, we are primarily concerned with the process of law-making (*tashri'*) in Islam. As noted above, there are four principal sources of law-making, ie, the Qur'an, *sunnah* (*hadith*), *qiyas* (analogy) and *ijma'* (consensus) in Sunni Islam. We will throw light on all these sources and the controversies around them. This is necessary because it is being maintained today ■ if there were no controversies around them and that in the entire body of Islamic laws developed there was no human agency involved. In fact, in the entire process of formation of the *shari'ah*, the human agent plays an important role. Though the Qur'an is the principal source of Islamic *shari'ah* as pointed out above, its understanding varies from person to person including the companions of the Prophet.

### The Qur'an and Its Understanding

There was no uniform understanding of the Qur'anic verses as they were revealed from time to time. The companions of the Prophet before whom revelations came often differed from each other in their precise meanings. No wonder then that differing commentaries have been written on the Qur'an. Though these commentaries have been written by very eminent theologians and Islamic thinkers, each Qur'anic commentary differs from the other. Here we would like to quote Ahmad Amin, an eminent modern Egyptian Islamic scholar. We are quoting the summary of his views from his classical work *Fajr al-Islam* (Beirut, 1975):

The Qur'an was revealed in the language of the Arabs and in the style and the way of speaking of the Arabs. Its words were



Arabic except a few (from other languages) which were Arabicised and which became part of the Arabic language. This was quite natural. The Qur'an addressed the Arabs primarily. The Qur'an also says, "And we sent no messenger but with the language of his people, so that he might explain to them clearly" (14.4). Despite this the whole Qur'an was not within the reach of all the companions of the Prophet. They could not understand it, neither in its overall sense nor in detail except that they heard it. Ibn Khalladun is not correct when he says that "the Qur'an was revealed in the language of the Arabs and in their style so they all understood it and knew its meanings — of individual words as well as of compound words." The fact that the Qur'an was revealed in Arabic does not mean that all the Arabs would understand its words as well as compounds. And proof of this is our observation that any book written in a certain language does not necessarily mean that all the people of that language would understand it. The understanding of the book does not depend on language alone, it also depends on the degree of one's intellect and how far it conforms with the intellectual status of the book. This applies to the Arabs as well as the Qur'an. All of them did not necessarily understand it fully. They differed in their understanding of it. Even the words of the Qur'an were not understood by all the Arabs as no one can claim that all the words of a language are known to all the people of a linguistic community. It would suffice to give an example: Anas bin Malik narrated that one person asked 'Umar bin al-Khattab about the words of Allah *'a fakihatun* ■■ *'abban* (and fruits and cattle feed), what is *'abba*? 'Umar said that we are forbidden to go into depth and strain ourselves.

We all know the status of 'Umar in matters of religion and knowledge. Then how about other companions? In fact, most of the companions were content with the overall sense of the verse. They hardly bothered to go into the details of its meaning. Besides that there are many verses in the Qur'an for which it is not enough to know the meanings of their individual words. The Qur'an itself says that there are verses which are decisive and there are those which are allegorical (3:6). In the Qur'an there are many verses which are *muhkamāt* (decisive) and these are concerned with the basis of *dīn* (religion) and principles of religion like in the chapter "al-An'am" and these verses could not be easily understood by

common Arabs. And in the Qur'an there are difficult verses referred to as *mutashabihat* (allegorical) which are difficult to understand and only a selected few can comprehend them.

The companions of the Prophet in general were better qualified to understand the Qur'an as it was revealed in their language and they also witnessed the circumstances in which the Qur'an was revealed. And despite this, they differed in its understanding from each other. Though all of them knew Arabic, some knew more about the *jahili* (pre-Islamic) literature and hence were familiar with alien words and this helped them in understanding many Qur'anic words. Similarly there were those who stayed by the side of the Prophet and knew the causes of revelation of the Qur'anic verses and there were those who did not. Knowledge of the causes of revelation (*asbab al-nuzul*) greatly helped in grasping the meaning of these verses and ignorance of the same could be quite misleading for understanding these verses.

Also, knowledge of Arab 'adat (customs) helped to understand the Qur'an. Those who knew more about them could comprehend the concerned ~~verses~~ better. For example, the verses pertaining to hajj. Those who knew more about the Arab 'adat pertaining to hajj during the *jahili* period could understand these verses better. Similarly, those who knew more about what the Christians and Jews used to do at the time of revelation of these verses in the Arab region could understand the concerned verses better. Those who did not, found it difficult to understand these verses. That is why there were differences among the companions and those who were companions of these companions about the meaning of these verses depending upon whether they knew about the Christians and Jews or not.

Then also the knowledge of the meaning of the Qur'anic verses depended on one's knowledge of *hadith* literature. *Hadith* literature is again highly controversial. We will throw light on this aspect a little later. From what has been stated above about the understanding of the Qur'an, it will be seen that even the close companions of the Prophet differed from each other. Later on this conflict was reflected in the formulation of the Islamic laws too. Each jurist understood these ~~verses~~ in his own way and also in the light of the *hadith* he relied upon. Thus it will be seen that though the source is divine (ie the Qur'an), its understanding is human.

Also, it should be noted that one's understanding of the Qur'an will also be affected by one's own circumstances and one's own perception of reality. Though the *fuqaha* (ie the jurists) tried most sincerely to understand the Qur'anic injunctions, they could understand them only in the light of their own circumstances. The understanding of the divine word can and should change with one's circumstances. What is of essence in the Qur'an is divine guidance, principles and values. The Qur'an, in this connection uses a key word *m'aruf* which means in keeping with the values and principles in the given circumstances and social environment. The word *m'aruf* thus is two-dimensional; one dimension is social and the other moral and ethical. One is not complete without the other. The moral has to be related with social.

It was for this reason that the *shari'ah* was never treated, at least by the earlier jurists, as a closed system. The principles of *ijtihad*, which implies creative interpretation were incorporated by no less a person than the Prophet himself. The earlier jurists relied on the principle of *ijtihad* in formulating laws but later on the principle of *ijtihad* fell into disuse and the *corpus juris* of Islam became a closed system. Instead of *ijtihad*, *taqlid* (imitation) became more acceptable.

In the first two centuries of Islam more than 100 schools of Islamic jurisprudence flourished out of which four main schools survived in Sunni Islam. The flourishing of many schools in early Islam clearly shows the spirit of freedom of thought, and attempts to interpret the Qur'anic verses to develop the Islamic legal system were highly valued by the religious authorities in that period.

### Hadith Literature

The second important source of development of legal thought in Islam is *hadith* — the sayings and doings of the Prophet. No doubt the Prophet was the best person to understand the divine intentions. He could properly interpret those verses and act according to them. Also, he was a guide par excellence for the Muslims. The Muslims would go to him and ask questions and seek his guidance in almost all matters. The Prophet either guided them himself or waited for revelation from Allah. When he said or did something it was carefully noted and his sayings committed to memory and passed on to others. Thus the Prophet's sayings and doings as recorded in the *hadith* literature became an important

source of legislation in Islam. However, there are two important aspects from which *hadith* literature needs to be examined: (1) its authenticity, and (2) its relation with the Prophet's own epoch.

First we would like to examine it (ie the *hadith* literature) from the point of view of its authenticity. Many *ahadith* (plural of *hadith*) proliferated after the death of the holy Prophet. However, the Prophet himself did not seem to be enthusiastic about the circulation of his sayings. At least he did not seem to have encouraged this process. He was also not keen that people should ask him about everything. He knew that whatever he said would be treated as ■ sacred law by the coming generations. He, therefore, often discouraged people from asking questions about their problems. Perhaps, the Prophet wanted people to draw more from the Qur'an by using their rational faculty and think for themselves about their problems. Also, the Prophet never asked people to commit his sayings to memory and compile them. On the other hand, he required people to commit the verses of the Qur'an to memory and also to compile them so that nothing would be lost to posterity. The Qur'an was central to the religion of Islam. Had the *hadith* been ■ significant to it and so central to it he would have asked the Muslims to commit them also to memory and he would have urged them to compile them. On the contrary we find in *Sahih Muslim* that the Prophet said that "do not write anything from me except the Qur'an and anyone who has written anything other than the Qur'an should wipe it out."

Some people maintain that this injunction of the Prophet (not to write the *hadith*) was temporary and that he had later allowed 'Abdullah bin' Umar to write them down. But at best it was a permission granted and not a necessary requirement to compile the *hadith* literature. This clearly shows that *ahadith* are not an integral part of formulation of the *shari'ah*. At best it can be a complementary factor. Also, when he permitted 'Abdullah bin 'Umar to write down the *ahadith* he did not inquire as to which *ahadith* he had written down nor did he hear them or correct them which he used to do in the case of the Qur'an, taking all precautions. Also, one can hardly rely on memory for narration of any *hadith* if it has to be an integral part of, or source for, the Islamic legislation. The Qur'an was written down so that there is no controversy about it at all. If *hadith* also had such importance the Prophet would have seen to it that it was given importance like

the text of the Qur'an. He would have got them all compiled and would have heard each and every *hadith* himself. There would have been no controversies at all.

We know that *hadith* literature has always been at the centre of controversy from the very beginning. Its systematic compilation began more than a century after the death of the Prophet. Hundreds of thousands of *ahadith* were in circulation by then. A whole science had to be developed to test the authenticity of the *hadith*. The experts developed what was called 'ilm al-rijal (science of men). Through it an attempt was made to establish the reliability and authenticity of the chain of men narrating the *hadith*. However, this was no foolproof method. It was difficult to have a unanimous view about a person's reliability.

Let alone during Bukhari's time which was much later, there were controversies about the *hadith* immediately after the Prophet's death. Those who had lived with the Prophet were still around and yet controversies about what the Prophet said and did began to develop. It was for this reason that the first Caliph Abu Bakr did not permit compilation of the *ahadith* either. According to *Tadhkirah al-Huffaz* Imam Zahbi said that after the death of the Prophet, Abu Bakr gathered together all the people and said, "you ascribe the *hadith* to the Apostle of Allah and then differ with each other about them. Those who ~~after~~ after you will differ even more intensely with each other. So it is desirable that you do not ascribe things to the Prophet. And if anyone inquires about it you should say that between you is the Book of Allah and whatever has been prohibited by it should be prohibited."

The same thing is said about 'Umar, the second Caliph too. When he consulted people about the *hadith* they opined that they be compiled. But 'Umar was not satisfied with this opinion. For a whole month he went on thinking about it and one morning, with great concentration of mind he came to the conclusion that it should not be compiled and told people: "I had thought about compiling the *hadith* but then it occurred to me that the people before us also compiled books and resorted to them and ignored the Book of Allah and by Allah I do not want that anything else be mixed up with the Book of Allah." And when the *hadith* literature anyway proliferated during the 'Umar's time he ordered, according to *Tabqat Ibn Sa'ad*, all compilations to be brought before him and he issued orders to burn them.



Thus we see that both the Caliphs, apart from the holy Prophet, were against compilation of *ahadith* and even took strong steps to prevent such a compilation. Their fear was that the forged *hadith* would soon multiply and people would give more importance to them than to the Qur'an. And their fears came true. Despite such stringent measures the *hadith* multiplied exponentially so much so that during Imam Malik's time (died 179 AH) there were no more than few hundred *hadith* (in his *Muwatta* there are no more than 300 to 500 *hadith*) but by the time Imam Bukhari began collecting (died 256 AH) his collection came to more than six hundred thousand *hadith* of which he selected no more than 2,630 *hadith* in all. Among the Sunni Muslims there are six authentic collections of *hadith* known as *Sihah Sitta* (ie, six authentic collections). Besides these there are those collected by the Shi'ah Muslims and for the Shias *Sihah Sitta* are not reliable. Similarly for the Sunnis the Shia collections are not acceptable.

Imam Bukhari collected the *hadith* mainly in the third century *hijrah*. To expect that whatever the holy Prophet said remained undistorted would be expecting too much. It would be an impossible thing to achieve, even if ■ one's integrity in the chain of narrators is doubted. And there were differences about the characters and integrity of narrators also. There were vested interests who wanted some people to coin spurious *ahadith* and use them for their own legitimation. In fact, forging *hadith* became a flourishing industry because different interests used to twist the sayings of the Prophet for their own use. The rulers also were in great need of the sayings of the Prophet for their own purposes, so they were in great need of *hadith* literature. There were rival factions struggling for power and the need of legitimation for their deviations through sayings of the Prophet was obvious. There are many such examples in the entire *hadith* literature.

This is as far as the authenticity of the *hadith* literature is concerned. As pointed out above, it ■ extremely problematic to accept the entire *hadith* literature as authentic. Many problems arise even with respect to the six authentic compilations (ie, *Sihah sitta*). The Hanafi Muslims themselves consider about two hundred *hadith* from Bukhari as problematic. But even if the entire collection as compiled in the *Sihah Sitta* is considered quite authentic, problems of different nature would arise. In the Qur'an itself there are verses which are contextual. They were revealed in

certain contexts and had validity in that context. For example, the Qur'an requires a portion of *zakat* to be spent on what it calls *mu'allafat al-qulub*, ie, for winning the hearts of non-Muslims who allied themselves with the Muslims. Hazrat 'Umar stopped spending on this count and maintained that it was no longer needed as Islam was by then quite strong. Thus with the change of context the applicability of the Qur'anic verse on *zakat* changed.

One can also give an example in the context of *hadith*. We read in one of the *hadith* (in *Sunan Abi Da'ud*) that the holy Prophet strongly condemned the pronouncement of triple divorce in one sitting and asked the man who had pronounced it to take back his wife. Thus according to this *hadith* triple divorce in one sitting is strongly prohibited. But in the changed context Hazrat 'Umar enforced it again and since then though called *talaq-i-bid'ah* — innovated or sinful form of divorce — is considered valid. Thus it will be ■■■■ that the *ahadith* also represents contextual applications of the Islamic law. The *hadith* as sayings and doings of the Prophet has contextual dimensions. The Prophet, through his sayings and doings, tried to apply the teachings of the Qur'an to his own times. Even the normative aspects of scriptural teachings have to be imparted a contextual dimension in order to make them effective or acceptable by the people of a particular era. The Prophet lived among Arabs who had their own ethos, customs, traditions, civilisational context and economic compulsions. All this had to be kept in view while applying the Qur'anic teachings. Islam as represented by the Qur'anic values and norms had great revolutionary potential all of which could not be actualised in the given Arab context. A reformer and ■■■■ revolutionary cannot altogether ignore the given context and received traditions. The Prophet had to make certain concessions in view of the society he lived in while applying the Qur'anic teachings. Thus, any *hadith* even if most authentic, cannot be an eternal component of the *shari'ah*.

The above discussion could be illustrated by a few examples. The Qur'an declares, in one of its verses, "And surely we have honoured the children of Adam ..." (17:70). It will be seen that the children of Adam include all humans, without any distinction, including that of master and slave. All have been honoured and all are equal in the eyes of Allah. This was a great revolutionary ideal upholding equality of all human beings making them equally

respectable in the eyes of Allah. However, in view of the prevailing conditions, such an equality could not be achieved and Islam had to permit slavery, albeit reluctantly, while trying to ease conditions of their life. Thus the elevated principle of equality had to be toned down, in view of the concrete conditions. The true potentialities of Islamic teachings could not be realised in that period. The question of sexual equality also falls into this category. The real intention of the Qur'an was to accord equal status to both the sexes. Firstly, women, like men, are human beings and all human beings are equally honourable in the eyes of Allah. Secondly, the Qur'an also separately declared the principle of equality of sexes, "*Wa lahunna mithl al-ladhi 'alayhinna* (ie, women's rights are the same as their obligation in a just manner, 2:228). But in view of the prevailing conditions and social context, sexual equality was not achievable, so the Quran had to add that "and men are a degree above them." Without men being given a slightly upper hand, they would not have accepted the Islamic ideal of equality in that society. In fact, though the Qur'anic norm was equality of sexes, ■■■ forged many *hadith* giving women a far more inferior status. Thus the *shari'ah* which based its laws ■■■ these *hadith* in respect of women, will have to be rethought in the changed context. Polygamy was also ■ contextual provision in the Qur'an. It cannot be treated ■■■ eternal privilege by men, nor unrestricted one. In today's conditions, if the *shar'i* positions are rethought suitably, the great Islamic ideal of equality of sexes can be realised.

### ***Ijma'* (Consensus)**

Another source of Islamic *shari'ah* is what is called *ijma'* (consensus). This concept implies that on critical issues if there is consensus of the community then it will become ■■■ integral part of Islamic *shari'ah*. When the great jurists agree unanimously on an issue then it is known as *ijma'-i-haqiqi* and when few jurists agree with each other and others remain silent (ie, do not oppose a formulation) it is called *ijma'-sukuti* (ie, silent consensus). The second category of consensus is also treated as the consensus of the whole community. There are some who go to the extent of saying that those who reject *ijma'* (*haqiqi* or *sukuti*) are *kafirs*, renouncer of Islam or atheists. Some even take an extreme position that such people must be punished by death.

Firstly, it must be understood that *ijma'* is merely a tertiary source and it cannot be equated with the Qur'an or *sunnah*. Certainly it cannot be as binding as the Qur'an or *sunnah* which have much more elevated status. In other words the opinion of some or most of the Islamic jurists cannot become what is called *hujjat-e-shari'ah* (ie, being the proof of the *shari'ah*). 'Allamah Shaukani points out in his book *Irshad al-Fuhul* that *ijma'* cannot stand by itself. It must be based on the Qur'an or *sunnah*. Similarly 'Allamah Ibn Hazm also points out in his book *Kitab al-Ahkam* that *ijma'* has to be based on what can be established from the Qur'an or *sunnah*. Thus it becomes obvious that *ijma'* by itself cannot become a source of Islamic law as often mistakenly understood by many. Those who resort to *ijma'* must cite proof from the Qur'an or *sunnah*.

Thus *ijma'* by itself cannot assume central significance. But it does not mean that it has no role to play. If intelligently and creatively used it can play an important role in modern Islamic legislation. In fact, the noted Islamic thinker and poet, Iqbal, in his *Reconstruction of Religious Thought in Islam* has pointed out that modern parliament in an Islamic country can constitute a body which can play the role of *ijma'*. Here the question arises — can such a body bring about changes in the *shari'ah* codified by the great jurists? It is necessary to throw light on this aspect. Generally Muslims think that the *shari'ah* is immutable as it is divine.

We have already pointed out that the *shari'ah* is not and should not be treated as a closed system. Its dynamism and vitality depends on its capacity to change with the times. Of course these changes will not be in principles and values but in their proper application keeping in view the social and other contexts. Maulana 'Umar Ahmad Usmani shows in his *Fiqh al-Qur'an* that the *shar'i ahkam* (injunctions) change with space, time and social conditions. He also tells us that during the period of the holy Prophet there was one injunction which was changed by his companions as the conditions changed. In particular we see that Hazrat 'Umar changed many decisions taken by the Prophet. Naturally when the rightly guided caliphs could change the injunctions of the Qur'an and *Sunnah* though they were so close to the period of the Prophet why can we not make changes more than 1,400 years after that period? The Maulana then goes on to quote

from the book *A'alam al-Muwaqqaf* by Ibn al-Qayyim al-Jawzi, a noted disciple of the great Islamic thinker Ibn Taymiyyah.

Ibn Qayyim in his above book points that the *shari'ah* is not meant for creating difficulties and problems but it is rather based on the welfare of the people in the matters of this life and life hereafter. The *shari'ah* is embodiment of justice, mercy, welfare and wisdom. Anything that becomes its opposite, ie, oppression, cruelty, mischief and absurdity cannot be called *shari'ah*.

It was in this spirit that Hazrat 'Umar took many decisions which were apparently contradictory to the Qur'an and *sunnah* but in fact were not. He suspended the punishment of cutting off hands for theft during famines, he again enforced the triple *talaq* (on account of its misuse by Arabs after the conquest of Syria, Egypt, Persia, etc), he stopped sale of slave-girls (mother of children, *umm-e-walad*), he did not distribute the lands conquered by the Muslims (though both the Qur'an and *Sunnah* allowed it), he also stopped giving a portion of *zakat* to the allies of Muslims (*mu'allafat al-qulub*), changed the punishment of externment for one year though continued with hundred lashes), etc. For all this there were very good reasons. He was not violating the real intention behind all this but ■ the same objective was not being achieved in the changed conditions for which the Qur'an and *sunnah* prescribed these *ahkam* (injunctions), he effected changes in them. It was for this reason the doctrine that 'with the change of times, the injunctions change (ie, *taghayyar al-ahkam bi taghayyariz zaman*) was formulated. Maulana 'Ala'i also points out that the shar'i injunctions are based on causes, and when they (the causes) change, injunctions also change.

If one studies the process of evolution of different schools of Islamic jurisprudence (ie, Maliki, Hanbali, Hanafi and Shafi'i) one will see that their formulations were greatly affected by their own social, cultural and economic conditions. Their differences in their formulations were precisely due to differing conditions. The *shari'ah* should be considered as an attempt to achieve the Qur'anic goals, values and principles. It is a means, not an end. Unfortunately, it is considered ■ end in itself and this approach creates many problems. The *shari'ah's* growth has stopped because of such rigid attitudes towards it. It has become stagnant. Despite a plethora of examples that the great classical jurists of Islam had an open mind on shar'i issues, our 'ulama and jurists have totally

closed mind. They indulge only in *taqlid* (imitation) and any rethinking is considered nothing less than sin and *kufur*. The Shah Bano movement in India was product of such ■ mind-set. The continuation of triple *talaq* is also a result of such stagnant thinking. It is unfortunate that no Muslim country has taken any lead in this matter. Those who are known as fundamentalists want to apply *shari'ah* mechanically and unthinkingly. They refuse to take modern conditions into account. It would be of great benefit to all if those who treat *shari'ah* as immutable study the history of evolution of various schools of *shari'ah*. Without the creative spirit of *ijtihad* one cannot play ■ useful role in modern times.



## WOMEN UNDER THE AUTHORITY OF ISLAM

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Religion and rituals are rooted in social structures from which they arise. No religion can be an exception to this rule, not even revealed religions. The Holy Qur'an itself proclaims this reality. 'For each (community) we have appointed a divine law and a way of life. Had Allah willed He would have made you one community. He may try you by that which He has given you. So vie one with another in good works'.<sup>1</sup>

It is very clear from the text of the above verse from the holy book that Allah has graced different peoples with different ways and rituals according to which they have to shape their religious and secular lives. Allah did not intend to appoint one uniform law for every people, past and present. Had He intended it, He could have made only one community but He chose otherwise and appointed different ways for different peoples at different times so that He could test them (that is, the people). It is from such verses that Maulana Abul Kalam Azad derived his revolutionary doctrine of *wahdat-e-din* (oneness of essence of religion) and differing *shari'as*, that is, different laws for different peoples, in keeping with the requirements of socio-temporal realities.<sup>2</sup>

There is a very important thing hinted at in the verse quoted above. Allah did not make one religious community but several and gave each one of them a different way of life in keeping with their genius and temporal requirements so that He may test them. Test in what respect? The answer naturally is to test them as to how best they can shape their lives in order to ensure ■ better way of life and compete with each other in good deeds in establishing peace and justice.

Thus we see that the Qur'an takes a sociological view of religion and rituals which comes very close to the modern

scientific approach. And this is precisely the point in approaching, like other questions, the question of women in the Islamic context. The normative side of religion finds its sociological interpretation in keeping with the social structure. We would elaborate this a little later. What is important is to emphasise the sociological approach.

The social dynamics brings about a dialectical interaction between the empirical and the ideological. The normative legal structure of a people must be examined in the light of this interaction. When the social structure is sought to be changed in the light of an ideology (revealed or otherwise) empirical realities do assert themselves. Finally what emerges is both contextual (empirical) and normative (ideological). The Islamic *shari'a* also is a synthesis of contextual and normative elements. The Islamic legists as well as historians have thrown detailed light on pre-Islamic practices some of which influenced the later Islamic practices.

### 1. Pre-Islamic and Later Islamic Practices

The pre-Islamic social structure was tribal and is referred to as *jahilliyah* (that is, a period of ignorance) in Islamic literature. The Qur'anic revelations provided people with the knowledge to combat *jahilliyah* practices. Tribal society has no written or revealed laws, only customs and usages; so did the pre-Islamic Arab society. The customs and usages, sanctified by age-old practices were followed irrespective of whether they were unjust or oppressive to certain sections of society. The only argument in their favour was that they found their forefathers following these practices. They argued with the prophets, 'How can we forsake what our forefathers found?' They said: 'Hast come unto us that we should serve Allah alone and forsake what our fathers worshipped?'<sup>1</sup>

Here we are mainly concerned with the status of women. In pre-Islamic society the position of women was considerably lower. The tribes were patriarchal in structure and generally assigned to women a much lower social status. The widows of fathers were inherited. The Qur'an refers to this practice and prohibits it. 'And marry not those women whom your fathers married, except what hath already happened (of that nature) in the past. Lo! It was ever lewdness and abomination, and evil way'.<sup>2</sup>

There were many abominable customs and usages in respect of women in the period of ignorance. Despite a measures of freedom, the overall status of women was much inferior in pre-Islamic society. If Islamic laws, the source of which is mainly divine revelations and their exemplification through the prophetic practices (*sunna*), are seen in the context of *jahilliya* practices, they will appear to be no less than revolutionary. The Qur'an greatly improved the social status of women and laid down definite norms, as against mere customs and usages. They could no longer be treated as mere chattels to be traded or objects of sexual lust. The married women thus were described by the Qur'an as *nuthsanat*, meaning chaste and secured.

During the period of ignorance there were no norms and laws as far ■ divorce and marriage on the one hand, and inheritance and property rights of women on the other, were concerned. One could marry as many women as one liked, could divorce them any time without any obligation as to maintenance, could even enter into temporary marriage contracts (*muta'a* marriage) and similar other practices.<sup>1</sup> There were no definite norms and laws.

The Qur'an, however, not only did away with all arbitrary practices but set out definite norms and gave women ■ definite status though not strictly equal to that of man. But the status accorded was very nearly equal to man's and seen in the then prevailing social context, it was definitely a revolutionary step. The Qur'an declares in unambiguous terms, 'And they (women) have rights similar to those (of men) over them in kindness, and men are a degree above them. Allah is Mighty, Wise.'<sup>2</sup>

The above verse must be carefully analysed and understood. The Qur'an makes it clear that women have rights similar to those of men, yet further on, it says that ■ are a degree above them. The two statements might appear to be contradictory but seen in the proper context, one would see that this contradiction reflects a social reality and that given the social reality it could not be easily resolved in favour of women. Also the words 'Allah ■ Mighty, Wise' are quite significant. Allah is mighty enough to accord equal status to women but wisdom lay in recognising certain social realities and acting accordingly. Mere mightiness might upset the social balance, thus causing more complex problems. Though Allah's intention was to accord equal status to women, the social context did not admit of it right away, and in His wisdom, He allowed men slight superiority over women.

In yet another verse, the reason for this degree of superiority is stated clearly. 'Men are in charge of women because Allah hath made the ■■■ of them to excel the other, and because they spend of their property (for the support of women), so good women are obedient (to Allah), guarding in the secret that which Allah had guarded.'

In the then Arabian society women were not expected or required to earn and look after the family. This was exclusively ■ man's obligation and preserve. It could not have been otherwise in the then sociological context. Since he was charged with the obligation of looking after the sustenance of the family he was also accorded a degree of superiority over woman. It was so in Allah's wisdom. Since Allah's wisdom cannot be arbitrary, if the social context changes and if women also begin to earn (and there is nothing in the holy book or in the prophetic *sunna* preventing women from earning their livelihood or that of the family) and look after the family, there will be nothing to prevent them from acquiring either equal status or even a degree of superiority over men. The Qur'an has certainly not shied away, as shown by the earlier verse (2:228), from pronouncing the doctrine of equality of sexes.

In any society in transition, whatever the ideological perspective for the future social set-up, one cannot completely snap the relationship with the past. We have already referred to the dialectical interaction between the empirical and ideological in determining the resultant reality which ultimately prevails. The Divine Wisdom cannot ignore the empirical. It is again in this spirit that Allah makes ■ very clear that each (community) has its own appointed law and way of life. It is an empirical reality that one should not quarrel; instead vie with each other to do good. Empirical reality does assert itself even if the ideologues might wish otherwise.

While referring to the empirical reality one has to bear in mind that while the ideological is transcendent, the empirical reality is subject to change in a changing society. The theologians, however, either completely ignore the empirical reality or do not take changes in it into account. Moreover, and this is worse, they often confuse the compound of ideological and static empirical reality as unchangeable transcendental theology. The Qur'anic theology, on the other hand, is neither dogmatic nor ignorant of the

empirical reality which tends to be dynamic. The great Islamic thinkers like Muhammad Abduh, Syed Ahmad Khan, Iqbal and others realised this.

Some of the pre-Islamic customs in form, if not in content, as an empirical reality, did intrude upon later Islamic practices. The *sunna* – both the words and deeds of the Prophet – had many elements of these pre-Islamic customs. These were unique to the Arabs of that region. However, the Qur'anic revelations were not only contextual but also normative and hence have transcendental validity. But one has to carefully sort out the contextual from the normative both in the Qur'an as well as in the *sunna*. The whole *corpus juris* of Islam has to be examined in this light.

The necessity of changes is acutely felt with the movement in this social base. Conservatism, while necessary to an extent to ensure continuity of what is best and most healthy in the past, cannot stand up to the pressures for genuine change. Moreover, it kills what is the creative best in human beings. Change in the social base demands creative response from human beings in order to make life more meaningful and worthwhile. The acclaimed poet Iqbal observes:

The ultimate spiritual basis of all life, as conceived by Islam, is eternal and reveals itself in variety and change. A society based on such a conception of Reality must reconcile, in its life, the categories of permanence and change. It must possess eternal principles to regulate its collective life, for the eternal gives us a foothold in the world of perpetual change. But eternal principles, when they are understood to exclude all possibilities of change which, according to the Qur'an, is one of the greatest 'signs' of God, tend to immobilise what is essentially mobile in its nature.<sup>8</sup>

He then more categorically states the need for change in the legal principles of Islam in the light of modern experience:

The claim of the present generation of Muslim liberals to reinterpret the foundational legal principles, in the light of their own experience and the altered conditions of modern life is, in my opinion, perfectly justified. The teaching of the Qur'an that life is a process of progressive creation necessitates that each generation, guided but unhampered by the work of its predecessors, should be permitted to solve its own problems.<sup>9</sup>

But unfortunately, conservatism is too dominant in the world of Islam to permit any change. The theologians have usurped the

right of the modern generation of Muslims to avail of their own experience to creatively reconstruct what is eternal in the religio-legal inheritance. Iqbal's voice of sanity has been relegated to an obscure corner while his poetry, rich in Islamic emotions and representing the aspirations of the Muslim elite, is highly acclaimed.

However, there is a genuine problem which sociologists of religion must grapple with. Conservatism, though a mental attitude, also has a social base. Conservatism finds a deeper anchor firstly in an unchanging society and secondly, in a rapidly changing society. In the second category of society conservatism provides an inner defence mechanism for an 'externally perceived threat' and that is how change is perceived by those who do not benefit from it. There is one more factor to be taken into account which is responsible for building up resistance to change.

Many of the Islamic countries are embroiled in an anti-imperialist struggle. They consider imperialism of the West a threat to their religion and culture. The ideology of modernisation is thus supplanted by the ideology of anti-imperialism. Modernisation is perceived as closer to, or the same as, Westernisation as well as opposed to it. This phenomenon can be clearly witnessed today in Iran. The Shah of Iran symbolised American imperialism and he initiated a programme of modernisation benefiting the upper classes. Ali Shari'ati and others used Islam very effectively as an ideology to oppose both the political and cultural onslaught of Western imperialism.<sup>10</sup> Any change was perceived as an onslaught and opposed.

Also, in other countries the Islamic opposition equates the ruling elite collaborators with imperialism and generates pressures for establishing an Islamic state. The ruling elites, in response to these pressures, project themselves as more conservative than their opponents and introduce 'Islamic measures'. One has to keep all this in mind while trying to analyse the phenomenon of neo-conservatism or the wave of fundamentalism in the Islamic world.

The status of woman also becomes an integral part of such political processes. Her status becomes as much a symbol of political struggle as anything else. The authors of *In the Shadow of Islam* inform us:



In three historical moments the *chador* (the veil) was turned into a symbol. At the time of Reza Shah's compulsory unveiling, for a woman to appear without it symbolised modernity and change; during the Revolution of 1979, wearing it symbolised resistance to the Shah; and finally, at the time of construction of the Islamic Republic, its imposition symbolised progress for the Islamic side and regression for others. At other times wearing or not wearing the *chador* was a matter of personal choice, whether for reason of religion or poverty, habit, convenience and so on. It did not imply taking sides, whether ideologically or politically.<sup>11</sup>

In India too, the question of any change in Muslim personal law is primarily political and can hardly be decided on its merits, religious or otherwise. Religion is subject to various interpretations and in today's complex situation the predominant interpretation is often determined by political rather than purely religious considerations. About Iran we are told, 'The question of Islam versus women's emancipation did not fully arise until later, when the power struggle of Reza Shah against the clergy made it a question, and again when, the Shah's white revolution brought Islam versus Westernism and nationalism (in general and in the women's question) into a head-on collision.'<sup>12</sup>

The case of Indian Muslims is no less complex. Sociologically they are quite backward, both socially and economically. The rural population (around 72 per cent in the case of Muslims) does not matter much in the debate for reforms. It is the urban population which plays an important role in such matters. The urban population as far as Muslims are concerned is predominantly made up of artisans. Artisans are generally socially backward and religiously conservative, especially when industrialisation is taking place and many of them are getting uprooted, as it means a threat to their economic security. Others among the urban Muslims are petty traders, doers of odd jobs, workers and lumpen elements. The professional middle-class, modern in outlook and one which involves itself in change and reform, is very weak. It is unable to exert sufficient pressure for change and in the face of its weakness tends to be conservative.

Such an atmosphere can hardly be congenial for the needed change. Religious change, or change in any traditional society arouses stiff opposition. It requires, in order to be successful, not only a felt need in a large section of society, but also a dedicated group of committed reformers. Also, the community among

which reforms are being advocated must be fully secure and confident of itself. There should not be any perceived or real threats to its security. Communal riots and strong communal propaganda on the part of communalists often create difficulties for those who advocate reform.

Often the demand for reforms in the personal law emanates from communal quarters, thus rightly creating the impression that it is a stick to beat the Muslims with rather than a genuine desire to improve the status of Muslim women. There are undoubtedly genuine elements among those who advocate change but they are outnumbered and often misunderstood. In such a complex situation the religious merits of reforms hardly matter. It is the minority perception, the political role of its leadership and the near absence of a strong desire for change in keeping with the true spirit of religion that finally decide the outcome. In such a situation impatience will not help. The reformers and advocates of change should not only have a great reserve of patience but should also have the right perception of the situation and proper assessment of various factors inhibiting change in order to chalk out the proper course.

## 2. The Veil and Polygamy: The Social Context

The way certain laws are practised by Muslims has created a lot of misunderstanding about them. It is wrong to maintain, as some less knowledgeable Muslims do, that the *Shari'a* is wholly divine. It is certainly based on the Holy Qur'an and *sunna* and to that extent it certainly carries elements of divinity in it. But there is also an element of human opinion (the opinion of the great Imams who compiled and codified the laws into what is now known as *shari'a*, *qiyas* (analogy) and *ijtihad* (exertion to properly interpret in keeping with the situation)). These thinkers and compilers of *Shari'ah* were certainly influenced by their own milieu which was predominantly male-dominated. No human being can escape such influences.

The Prophet was extremely kind to women but the constraints of the male-dominated environment influenced his decision also. One anecdote in this respect is quite interesting. 'It is related,' says Prof S T Lokhandwala, that on one occasion the Prophet said: "Beat not your wives." Then 'Umar came to the Prophet and said: 'Our wives will get an upper hand over their husbands from hearing this.' He also claimed that the *Quraysh* (the tribe of the

Prophet) always ruled their women and the Ansars (the people of Madina) were always ruled by their women. So the Prophet agreed to keep the Arab social custom unchanged. Then a large number of women collected round the Prophet's family, and complained of their husbands beating them. So the Prophet said, 'Verily a great number of women are gathered here in my house complaining of their husbands and those men who beat their wives do not behave well. He is not of my way who teaches a woman to go astray.'<sup>13</sup>

The above incident clearly shows the social pulls and pressures the Prophet, the great lawgiver, had to work under. He could not have ignored certain social realities of his time. The contextual factor, as far as *hadith* and Prophetic practices are concerned, will have to be taken into account before drawing any conclusion. No law can totally free itself from the social context. Divine wisdom also lay in not ignoring the social context. Most of the revealed verses in the Qur'an pertaining to socio-economic or legal matters are called *mu'amalat* — social context. This context must be carefully evaluated in order to correctly understand the import of any such verse.

As far as women are concerned this can be illustrated by taking the question of the veil and polygamy, both the highly controversial issues in our social context. First let us take the question of the veil. The verse quoted in support of the veil is as follows: 'O Prophet! Tell thy wives and thy daughters and the women of the believers to draw their cloaks close round them (*yudnina*) (when they go abroad). That will be better, that they may be recognised and not annoyed.'<sup>14</sup>

Firstly, in this verse the context is clear from the portion underlined. There were hypocrites and anti-social elements who used to tease Muslim women and when caught and reprimanded would maintain that they did not know that they (that is, Muslim women) were Muslims. In order that the Muslim women be recognised, they were instructed to draw their cloak closer to the face. The main intention of this verse, according to Zamakhshari, the great M'utazalite commentator of the Qur'an, is to distinguish *hurrah* (free woman) from *amat* (slave woman) so that free woman is recognised and not harassed or teased.<sup>15</sup> Zamakhshari maintains that the emphasis is on being recognised. Thus the real intention of drawing the cloak closer is to be recognised as a free

woman. The context of the verse is thus very clear. First, there is no mention of veiling the face and, secondly, it is not an obligatory order for all time to come. If the context changes, the reason adduced disappears; it would no longer be binding.

Another important verse in this respect is from chapter 24. It says:

And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof, that they should draw their veils over their bosom and not display their beauty except to their husbands, their father, and that they should not strike their feet in order to draw attention to their hidden ornaments.<sup>16</sup>

Here also there is no mention of veiling of the face. The whole emphasis is on modesty and avoidance of unnecessary beauty and adoration in order to attract a man's attention. To use the modern feminist movement's jargon, women should not be made an object of lust. Her way of dressing should be such as to protect her individuality and dignity as ■ woman. Imam Fakhr al-Din Razi, another celebrated commentator of the Qur'an, also maintains that there is no veiling of face required as hands and face remain exposed by way of natural habit.<sup>17</sup> It is interesting to note that the Qur'an admonishes men also to be modest and keep their gaze lowered. 'Say to the believing men to note that they should lower their gaze and guard their modesty; that will make for greater purity for them.'<sup>18</sup> This verse precedes the one admonishing women to be modest. Thus the Qur'an requires of both men and women to be modest. It was only male domination which put women under the veil and confinement without corresponding rigorous sexual behaviour on their part.

The case of polygamy is not much different. What was permitted in a certain social context and with great reluctance was taken by men as licence to marry up to four women. This is far from the Qur'anic spirit and social context. Polygamy has been permitted by the Qur'an in ■ concrete social context and in order to do justice to the weak (that is, orphans) and subject to the condition that equality of treatment would be ensured and the Qur'an itself makes it very clear that equality of treatment is almost an impossible condition to meet.

As for polygamy the Qur'an says:

They ask you concerning women, say Allah gives you decree concerning them and the scripture which has been recited unto you (gives decree) about orphan ■■■■■ to whom you do not give back what is due to them (namely, their properties which are under your charge) but you would rather marry them, and also (concerning) the weak among children, and that you should deal justly with orphans. You will never be able to deal equally between (your) wives, however much you wish (to do so), so do not incline away completely from one, leaving her suspended.<sup>19</sup>

The other verse on polygamy is worded thus:

Give unto orphans their wealth and do not exchange (their) good properties with your bad ones, nor consume their properties by mixing them with yours; it is indeed a great sin. But if you cannot do justice to orphans, then you marry from among (orphan) women such ■■■ please you — two, three or four. If, however, you fear you cannot do justice (among co-wives) then marry only one or (marry) women-slaves, this would be nearest to avoiding injustice.<sup>20</sup>

It is very clear from the wordings of the above verses on polygamy that both have been revealed in the context of orphan girls and the primary concern is justice both with the properties of orphans and co-wives, if their wards marry more than once. There was the problem of justice with orphans, and in pre-Islamic society the Arabs used to take any number of wives. The orphans were weak and subject to injustices in respect of their properties at the hands of their guardians. In order to ensure justice to the orphans Allah permitted their guardians to marry either from amongst these orphans or their mothers up to four so that they and their properties would be looked after properly. The number of wives was restricted to four, justice was ensured to the orphans and men were strictly warned to do equal justice to all the wives, otherwise to marry only one. Thus we see that justice was the primary concern whether for orphans, for the weak or for the women as wives.

Seen thus in the proper social context the verses on polygamy are not a general permission, let alone an open licence, to take more than one wife. Firstly, it has been permitted only to ensure justice to orphan girls or women. If one does not have any such problem of looking after orphans, the question of taking more than one wife does not arise at all. Secondly, this solution also was suggested in the context of the Arabian society where polygamy

was quite common, that too with a rider to do equal justice to all the wives, or take only one.

If one keeps this context in mind and also the modern social context, and the increasingly greater social role played by women, their sharpened sense of equality makes polygamy as good as banned. Moreover, the holy Qur'an's strong insistence on justice should get precedence over everything else. One should also bear in mind that the sense of justice also has a social context. What was considered just in ■ medieval society may not be considered ■ in our context today. The Qur'an, moreover, does not negate, as pointed out earlier, the dynamics of social change and context of social justice. Polygyny, polygamy or monogamy may not be ■ perfect model of social justice; it is only the social context which would decide the general acceptance or rejection of a particular mode of marriage. It is wrong to consider any one of them as the perfect model.

One thing is more than apparent from many verses of the Qur'an. Normatively speaking, it intends to treat the two sexes as equal on the human plane. This doctrine of equality of the sexes has been enunciated in terms of legal rights when it states:

For them (women) there are rights (against men) that are exactly commensurate with their obligations (towards them).<sup>21</sup>

And in terms of reward in religious merit when it says,

Lo! men who surrender unto Allah and women who surrender, and men who believe, and ■■■■■ who believe and men who obey and women who obey, and men who speak the truth and women who speak the truth, and men who persevere (in righteousness) and women who persevere, and men who are humble and women who are humble, and men who fast and women who fast, and men who guard their modesty and women who guard (their modesty), and men who remember Allah and women who remember — Allah has prepared for them forgiveness and ■ vast reward.<sup>22</sup>

The author does not think that more equality than this could be promised in any other religious scripture.

### **Divorce and Muslim Women**

The Supreme Court judgement granting maintenance to ■ Muslim woman after divorce beyond the period of *'iddah* (generally three months after the divorce takes effect) has attracted wide attention among those who advocate reforms in the law as it operates today,



and those who oppose any changes ostensibly on the ground that it is divine and hence cannot admit of any change.

The Supreme Court judgement pertains to Shah Bano Begum of Indore who was divorced by her husband, advocate Mohammed Ahmad Khan, in November 1978. They were married in 1932 and have three sons and two daughters. The husband paid her maintenance at the rate of Rs 200 per month from the time he drove her out in 1975 until he divorced her and including the period of *'iddah*, that is, three months after the divorce.

The aggrieved woman filed a suit against her former husband claiming maintenance beyond the period of *'iddah* under Section 125 Cr. PC in the court of the Judicial Magistrate (First Class), at the rate of Rs 500 per month. She alleged that her husband earned Rs 60,000 a year. The court granted her a paltry sum of Rs 25 per month. In a revision application before the Madhya Pradesh High Court the maintenance amount was revised to Rs 179.20 per month. The husband filed an appeal against this in the Supreme Court.

The Supreme Court upheld the divorce's contention for maintenance beyond the *'iddah* period and applied Section 125 Cr. PC as the Muslim Personal Law does not admit any maintenance beyond the period of *'iddah*. In this case the Supreme Court observed, 'There is no conflict between the provisions of Section 125 PC and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself.' For hearing this case a five-judge Constitution Bench headed by Chief Justice Y V Chandrachud was constituted.

The Court rejected the husband's contention that the wife is entitled to *meher* and the maintenance for the period of *'iddah* after she is divorced. The Court observed that if *meher* is the amount which the wife is entitled to receive from the husband in consideration of the marriage, that is the very opposite of the amount being payable in consideration of divorce.

Here we would like to throw some light on this important controversy. The judgment is bound to have far-reaching consequences as far as personal laws of various communities are concerned. The Supreme Court itself is aware of this when it observes, '... inevitably the role of the reformer has been assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is palpable.'

The judgment was of great interest and importance and was supported and opposed with great passion. Both of those who opposed and those who supported any change or reform, can be divided into two categories. Those who supported any change or reform in Muslim Personal Law were:

1) Those who wanted to fight injustices against the weaker sex and male domination. This category includes many militant women's organisations (who also fight against bride-burning, cruelty against women, etc), as well ■ those who genuinely desire change and reform in keeping with the conditions of modern times.

2) The second category includes those who are not genuinely concerned with reform but nevertheless want change in Muslim Personal Law on the grounds that Muslims are enjoying certain undesirable privileges like taking more wives than one and divorcing them while the Hindus are compelled to practise monogamy and cannot divorce their wives unilaterally. In other words, their motives ■■ communal rather than secular or genuine feeling for suffering women.

Again, among those who oppose any reform or change in Muslim Personal Law, there are two categories: First, those who oppose for political reasons and in order to promote their own leadership by playing up emotional issues, including many Muslim theologians as well as secular political leaders. These theologians and secular leaders from amongst Muslims have made retention of Muslim Personal Law a key issue in Muslim politics at the cost of more relevant secular issues being faced by Muslims. Secondly, there is a large number of Muslims who genuinely think that the *Shari'ah* (mainly Hanafite school of jurisprudence followed by the majority of Sunni Muslims in India) is totally divine and hence immutable and there is no place for any reform or change through human agency, whatever the merit of the case for reform. Those who hold this opinion are naturally in overwhelming majority among Indian Muslims today.

When there are powerful vested interests on both sides of the divide (theologians and Muslim politicians who have made it a key issue of Muslim politics, and Hindu communalists who are bent upon forcing change and who give vent to their aggressive feelings on this issue), it becomes very difficult to conduct the debate on change in a rational and dispassionate way.

A couple of weeks before the Supreme Court judgment, at a well-attended Muslim Personal Law Board meeting at Calcutta in the first week of April 1985, the Board's president, Maulana Abul Hasan Ali Nadvi, had said in a highly emotional tone that Muslim Personal Law was based on the Qur'an and *Sunnah*, and renouncing it would amount to renouncing the holy book and *Sunnah* which means *kufr* (unbelief) and a Muslim under no circumstances would accept *kufr*. This report was carried by *Azad Hind*, an Urdu daily from Calcutta. Similarly, Banatwala of the Indian Union Muslim League, demanded in Parliament, in the first week of April, deletion of Article 44 (pertaining to introduction of a uniform civil code) from the Constitution. Such speeches and events were widely covered by the Urdu press and reinforced the feelings of Muslim masses for no change whatsoever.

The Hindu communalists, on the other hand, carried on ■ vicious propaganda for a uniform civil code ■■ the grounds that most Muslims take four wives and produce innumerable children, thus multiplying their population, and would soon outnumber the Hindus. At the time of the *Ekatnuta Yagna* organised by the *Vishwa Hindu Parishad*, pamphlets were distributed depicting a Muslim man with four wives and with the slogan 'We five, ours twenty-five'. It was ■ highly mischievous propaganda which created strong apprehensions in the minds of Hindus about the fast-multiplying population of Muslims and the possibility of another Pakistan. Some communalist Hindus filed ■ petition in the Calcutta High Court demanding also a ban on the Qur'an on the plea that it incites Muslims to kill *kafirs*. The petition was filed on April 16, 1985 under Article 226 of the Constitution and Section 95 Cr.PC and Section 153 (A) and 295 (A) IPC. Fortunately, it was rejected by the Calcutta High Court, but it has to be noted that such moves can only exacerbate communal feeling rather than create a genuine atmosphere for religious reform and change.

Let us examine the case for change or reform in the Muslim Personal Law as it operates today in India. We shall particularly deal with the case of maintenance as the Supreme Court judgment pertains to the question. First and foremost, it must be borne in mind that the *Shari'ah* as compiled by eminent and revered jurists is not wholly divine. It is undoubtedly based on the Qur'an and *Sunnah* but also on *ra'i* (human opinion of those jurists), *ijtihad* (personal exertion and interpretation) and *qiyas* (analogy), and

that is why there are many differences between different schools of law. These differences are no doubt mostly on *furu'at* (that is, on matters of detail) but in certain respects are also of a fundamental nature. The Sunnis, for example, consider a *mut'a* marriage ■ forbidden whereas the Shias uphold it. Had the *Shari'ah* been wholly divine, no such differences whether of a fundamental nature or in matters of detail would have existed. Thus the *Shari'ah* has both components: divine as well as human. It is the latter component which, with the change of circumstances, stands in need of change as the great jurists themselves had used their human judgement for compilation of *Shari'ah* in their own circumstances.

The differences between various jurists can in fact be explained by differences in their geographical, social, and temporal differences. Imam Hanbal and Imam Malik belonged to Mecca and Medina and hence were closer to the Qura'nic and Medinese traditions as they did not have to face new problems which arose in far-off places like Baghdad, Basra, Egypt and Damascus where people of diverse origins, different outlooks and multiple traditions mixed together, thus throwing up a variety of problems. In fact, a variety of problems had begun to arise with the conquests of far-off places and the four rightly guided Caliphs themselves had to confront and tackle many such problems. (The great jurists who were engaged in the serious enterprise of compiling *Shari'ah* in the second and third century *Hijrah* (8th and 9th century A.D.) and in quite far-off places had naturally to face a greater variety of problems which they tried to tackle in the light of the Qur'an and *Sunnah* using their own opinion.

One can hardly ignore the fact that it was a male-dominated milieu and jurists could not but give more benefits to men while using their opinion on various matters and their details whether pertaining to maintenance, custody of children, different forms of divorce, marital option, guardian's right, etc. It could not have been otherwise in such a milieu. Equal status of women could not have been accepted by society ■ large; that was in keeping with the spirit of the times. However, it does not mean that the laws as codified by the great jurists using their opinion and interpretation should be treated as immutable. With change of circumstances, certain inevitable changes in the components based on *ra'i* (opinion) must be subjected to change.

As for the influence of circumstances, it would be interesting to note the case of an irrevocable divorce in one sitting. In this form of divorce, the husband can, in one sitting, pronounce the word *talaq* thrice to make it an irrevocable divorce. It is *talaq al-bid'a* (that is, innovated divorce) which has not been prescribed by the Qur'an or *Sunnah* of the Prophet. In fact, there are instances in which the Prophet is reported to have frowned upon the practice of pronouncing *talaq* thrice in one sitting. (See *Mishkat Sharif*, Vol.1 Bab al-Khul'a wa al-Talaq, Delhi, nd, p. 711.) Most theologians agreed that this form of divorce was introduced by the second Caliph Hazrat 'Umar in order to punish some unscrupulous persons who had taken divorce very lightly.

It should also be noted that the prevalent method of *talaq* among the Indian Muslims (mainly Hanafis) is not in keeping with either the Qur'an or the *Sunnah*. According to the prevalent method a Hanafi Muslim can pronounce *talaq* thrice in one sitting and it becomes an irrevocable divorce. Even if the word *talaq* is pronounced thrice in the state of inebriation, anger, or by way of fun, divorce would be valid. It is this form of divorce which has become a cause of great suffering for thousands of Muslim women.

The Qur'an does not refer to this form of divorce. According to the Qur'an ■■■ can give only one divorce after every menstrual course (called *talaq-i-raj-i*, that is, revocable divorce) and divorce will become irrevocable if it is repeatedly pronounced thrice over ■ period of three menstrual courses. Thus there would be enough opportunity for reconciliation if divorce had been pronounced in a state of anger or due to temporary conflict between husband and wife.

Thus the Qur'an says:

Women who are divorced shall wait, keeping themselves apart, three (monthly) courses. And it is not lawful for them that they should conceal that which Allah hath created in their wombs if they are believers in Allah and the Last Day. And their husbands would do better to take them back in that case if they desire a reconciliation. And they (women) have rights similar to those (of men) over them in kindness ... (2:228).

Further, the Qur'an says: 'Divorce must be pronounced twice and they (wives) must be retained in honour or released in kindness' (2:229).

Thus it can be seen that there is no concept of three *talaqs* in one sitting, as practised by the Muslims, in the holy book. In fact,

this practice was followed by the Arabs during *jahilliyah* (pre-Islamic period) and the Prophet is reported to have expressed his anger on such a form of divorce. The practice came back after the death of the Prophet as it was advantageous to men. It is highly regrettable that the Muslim jurists defend this form of un-Qur'anic divorce as an integral part of Islam and even consider it divine. There are clear injunctions against this form of divorce both in the Qur'an and the *Sunnah*. All the eminent theologians accept this.

One must remember that the Qur'an does not permit indiscriminate divorces. The words of the Qur'an (a woman) 'must be retained in honour and released in kindness' make its intention very clear. The wife must be treated with honour in wedlock (she must retain her individuality and dignity) and released with 'kindness' (that is, divorced) if a smooth and dignified life in wedlock is not ensured. Unfortunately, all such directives of the Qur'an have been thrown to the winds by the Muslims.

The Supreme Court judgment is about payment of maintenance to the divorced wife. It is true that all schools of Islamic jurisprudence restrict maintenance to the period of '*iddah*', that is, either three months from the time divorce takes effect or, if the wife is pregnant, until she gives birth to her child. The Qur'an uses very kind words for the divorced wives. The Qur'anic verse is as under:

Lodge them where you dwell, according to your wealth, and harass them not so as to straighten their life for them. And if they are with child, then spend for them till they bring forth their burden. Then, if they suckle for you, give them due payment and consult together in kindness (Qur'an 65:6).

The Qur'an exhorts ■■■ to look after their divorced wives in the same manner as they look after themselves and not throw them out with a pittance. Though provision for the period of '*iddah*' has not been clearly mentioned in the verse, its implication is clear from the section of the verse which refers to bringing forth of ■ child if the woman is carrying.

However, the social context of the Qur'anic injunction should also be kept in mind as Allah's injunctions cannot be devoid of social wisdom and social justice for both men and women. In Arabian society, firstly it was no stigma for a woman if she was divorced, secondly, she could easily revert to her parents who looked after her until she remarried. In such a social context it was not necessary for her to be provided for beyond the period of



'iddah when she was again free to remarry, and in most of the cases she did.

However, the Qur'an, in order to prevent injustice even in exceptional cases wherein the woman could not marry or had no one to look after her after the period of 'iddah, also said, 'For divorced women a provision in kindness: a duty for those who ward off (evil)' (Quran 2:241). Though it may not be compulsory for man to provide for his divorced wife beyond the period of 'iddah in normal cases, it may be provided for even beyond 'iddah in kindness and also by way of duty in cases where it might lead to social evil. In any case it is social justice which is more important. It is keeping in view this provision of the Qur'an that some Muslim countries have provided for maintenance of the divorced wives beyond the period of 'iddah, as, for example, the Syrian Law of 1953 which has made such a provision on the basis of the above verse. (See Tahir Mahmood, *Family Law Reform in the Muslim World*.)

It is really unfortunate that for political compulsions even the provisions of the holy book, in matters of divorce and maintenance beyond certain period of 'iddah are being overlooked. In circumstances prevailing in India, divorce often becomes a social stigma and the divorcee finds it much more difficult to remarry and in many cases there is no one to look after her after she has been arbitrarily and unilaterally divorced. The conditions in our country are very different from those of Middle Eastern society in matters of remarriage and divorce. Our social ethos, therefore, require proper interpretation of the divine injunctions. Kindness and obligation to social justice and justice to weaker sections are repeatedly emphasised by the holy Qur'an. The combination of 'kindness' and 'obligation' is important to note. If out of kindness one provides for the divorcee beyond the period of 'iddah in cases where there is no wherewithal for the woman, so far so good; but if one does not do so it may have to be made obligatory to ward off social evils.

If we are honest about doing justice to women in the right spirit of the Qur'an there is no need to get agitated over the Supreme Court judgment. This judgment should, instead, lead us to introspection about certain uses and misuses of Muslim Personal Law in India in favour of men and to a serious bid at reform. Muslim women after all are as much Muslims as Muslim men and nobody can deny the fact that they have suffered. The

Qur'an has hinted at a slight male superiority (it was natural in the social circumstances then prevailing) but it has certainly not advocated the concept of male domination. But later developments unfortunately imposed total male domination in violation of the Qur'anic spirit. Modern conditions have made male domination all the more repugnant. Shall we take note of the divine injunctions overcoming old male prejudices and political compulsions?

### Notes and References

1. The Qur'an 5:48.
2. See Commentary on this verse by Maulana Abul Kalam Azad in his *Tarjuman al-Quran*, vol.II, pp 632-33.
3. The Qur'an 7:70. See also 11:62, 14:10, 16:35, etc.
4. The Qur'an 4:22.
5. For pre-Islamic customs about marriage, divorce etc, see *Kinship and Marriage in Islam*.
6. The Qur'an 2:228.
7. The Qur'an 4:35.
8. Dr Sir Muhammed Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore, 1960), pp. 147-48.
9. *Op cit*, p. 168.
10. Ali Shari'ati, a highly articulate Western-trained sociologist, interpreted Islam so as to effectively oppose the repressive politics of the Shah. He made religion highly respectable and gave it a radical thrust. He used to draw huge audiences in Iran and the cassettes of his speeches sold by thousands. The Shah's agents murdered him in London.
11. Azar Tapari and Nahid Yeganah, *In the Shadow of Islam — The Women's Movement in Iran* (London, 1982), p. 31.
12. *Ibid*.
13. See *Mishkat Babu-n-Nikah*, quoted by Prof. S T Lokhandwala, "The Position of Women under Islam" in *Islamic Perspective*, vol I, January 1984, ed by Asghar Ali Engineer.
14. The Qur'an 33.
15. See Zamakhshari's *Al-Kashshaf*, vol III, Beirut, p. 274.
16. The Qur'an 24:31.
17. See Maulana Muhammad Ali's *Bayan al-Quran*, vol II (Lahore, 1388 AH), p. 964.
18. The Qur'an 24:30
19. *Ibid.*, 4:127-129.
20. The Qur'an 4:2:3.
21. The Qur'an 2:228
22. The Qur'an 33:36.

### 3

## THE QUR'AN, MALE EGO AND WIFE-BEATING

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Most of the religions originated in or before the medieval ages and their founders were men. Also, all religions originated in a patriarchal society. No wonder then that these religions gave a dominant position to men and reduced women to — at best what can be called — a secondary status. Women were considered inferior in intellect and morales. It is often found in religious literature that women and animals have no souls. In Biblical tradition woman was created from the rib of Adam to give him company. Thus she was a secondary creation. Also it was Eve who tempted Adam to eat the fruit of the forbidden tree. She was also considered unclean during her menstrual periods. Some social traditions have treated her ■ untouchable as long as the menstrual period lasts. Some religious traditions even forbade her to recite holy scriptures.

However, for all this discrepancy against women religion alone should not be held as the main culprit. One has to see religion too, in a certain concrete sociological or socio-historical context. It would be more correct to say that it is ■ patriarchal society which is responsible for such inferior status of women. Scriptural texts have been invariably interpreted by men. They even went to the extent of inventing what was not there in the scriptures. There are several examples to support this contention. For example, the *Manusmriti* considerably deviates from some important Hindu scriptures. It is also important to note that for an average person, including traditional women, it is interpretation and scriptural commentary which is more important than the scripture itself.

The Islamic scripture Qur'an has been more than fair to women. As I have repeatedly emphasised, it is the Qur'an which has, for the first time in the history of humankind, recognised women as legal entities and given them the right to marriage, divorce, property, inheritance, etc. I have explained in detail the rights women enjoy according to the Qur'an elsewhere. The Qur'an has repeatedly emphasised her dignity, her rights and also that she be kindly treated. Yet, the *hadith* literature and the Qur'anic commentaries are less than fair to her. This *hadith* literature has to be seen in the socio-historical context. In other words, we have to emphasise what is normative in the Qur'an and *hadith* and discard what was contextual. What is normative is more akin to divine than what is contextual, which is more akin to human. This distinction can be of immense help in promoting women's rights today.

We will refer to ■ few Qur'anic verses which indicate that the women were sought to be treated equitably. It should be borne in mind that the Qur'an teaches that all believers are equal before Allah and women are also believers and hence they ought to enjoy equal status. This is further emphasised by the Qur'an when it says: 'And the believers, men and women, are friends of one another. They enjoy good and forbid evil and keep up prayers and obey Allah and His Messenger. As for these Allah will have mercy on them.' (9:71)

Thus believers, men and women are each others' friends and both do what has been enjoined by Allah, and thus in His eyes they enjoy equal status and both have been declared as equally entitled to Allah's mercy. This is quite ■ significant Qur'anic pronouncement as far as sexual equality is concerned. The Qur'an lays stress more categorically in yet another verse:

Surely the men who submit and women who submit, and the believing men and the believing women, and the obeying men and the obeying women, and the truthful men and the truthful women, and the patient men and the patient women, and the humble men and the humble women, and the charitable men and the charitable women, and the fasting men and the fasting women, and the men who guard their chastity and the women who guard their chastity, and the men who remember Allah much and the women who remember — Allah has prepared for them forgiveness and a mighty reward. (33:35)

Thus it will be seen that women have been shown equal to men in every respect. Also, both will be rewarded equally for their good deeds and no distinction whatsoever would be made between them. It was also categorically stated that women have the right to earn too. 'For men,' declares the Qur'an, 'it is the benefit of what they earn. And for women it is the benefit of what they earn.' Thus according to the Qur'an women not only have the right to earn but also that what they earn belongs to them alone. It cannot be shared by their fathers or husbands except by their own pleasure. These were no insignificant measures looking to the times when the Qur'anic verses were revealed. There was no concept of equality of sexes until the beginning of the twentieth century. Normatively speaking, the Qur'an accepted this equality in the beginning of the seventh century itself. However, what was given by Allah was not conceded by man. Man invented various devices to take away what was divinely given to women. Also, when Allah went too far in conceding equality of the sexes men forced Him to maintain their superiority.

Thus we find a few statements in the Qur'an wherein a slight superiority is conceded to man. Thus while the Qur'an declares, 'And women have rights similar to those against them in a just manner' (which is thought to be a declaration of equality of sexes by some modern interpreters), it also adds an end note, 'and men are a degree above them', to satisfy the male ego. Such statements are found elsewhere too in the Qur'an. If the Qur'an had not accepted the social reality of a patriarchal society and conceded slight superiority to men, the Prophet would have had to face a very difficult situation.

This is borne out by the following incident which has been narrated by some very prominent commentators of the Qur'an like Zamakhshari and Tabari:

A woman came to the Prophet and complained that her husband slapped her without any fault of hers. She asked the Prophet what she should do. The Prophet asked her to slap her husband in retaliation. Though the women of Medina were jubilant yet it caused quite a commotion among the men. They went to the Prophet and said, "O, Prophet, if you permit our women to retaliate against us, how are we going to keep our families under control?" The Prophet then waited for the revelation. The Divine revelation could not ignore the prevalent social reality, and conceded to the

male demand. The Prophet summoned men and read out the verse revealed and commented (which is quite significant) that I willed one way and Allah the other way ... The **verse** as revealed is as under:

'Men are the maintainers (*qawwam*) of women, with what Allah has made some of them to excel others and with what they spend out of their wealth. So the good women are obedient (*qanitat*), guarding the unseen (*ghunyb*) as Allah has guarded. And (as to) those on whose part you fear desertion, admonish them, and leave them alone in the beds and chastise them (*wadribuhunna*). So if they obey you, seek not a way against them. Surely Allah is ever Exalted, Great (4:34)'.

This verse is the most contentious one as far as the concept of male domination is concerned. Most of the early commentators, under the influence of medieval ethos, have cited it as a proof of the divine sanction for male superiority. Some of the conservative commentators of India translated the word *qawwam* in Urdu as *darogha* (ie, man is like a police officer for woman). However, the modernists who stand for sexual equality read this verse very differently. For example, Muhammad Asad, a noted modernist commentator translates the above verse as under:

MEN SHALL take full **care** of **women** with the bounties which God has bestowed more abundantly **on** the former than on the latter, and with what they may spend out of their possessions. And the righteous women are truly devout ones, who guard the intimacy which God has [ordained] to be guarded.  
And as for those women whose ill-will you have reason to fear, admonish them [first]; then leave them alone in bed; then beat them; and if thereupon they pay you heed, do not seek to harm them. Behold God is indeed most high, great.

Here the word *qawwam*, which is a key word in this verse, has been rendered very differently from the other commentators. In this rendering the emphasis is not on superiority of men over women but on the obligation of men to maintain women. The word '*qawwam*' has been rendered as one who has to 'take full care of women'. This rendering incidentally is quite close to Tabari's comment on the verse. Tabari also says that men are *qawwam* because they spend their wealth over women and take care of their maintenance. But Tabari quotes others to the effect that *qawwamun* means *umara'* (ie, the rulers) which means that men are rulers over women. But this does not represent Tabari's own view as he quotes others to this effect.



But Muhammad Asad feels that *qawwam* is the intensified form of *qa'im* and that this grammatical form is more comprehensive, and it combines the concepts of physical maintenance and protection as well as of moral responsibility. Thus according to Muhammad Asad, being *qawwam* puts additional responsibility on men towards women. Also, it is important to note in what sense Allah has given to men *fadl* (preference or favour) over women. As pointed out above, medieval or conservative commentators consider it ■ superiority of men over women. Muhammad Asad, on the other hand, considers it a bestowal of greater bounties on men than on women as in those days it was men who earned and spent over their women, though theoretically women also, ■ pointed out above, could earn. But sociologically speaking, women of that early Islamic society in fact did not earn and like other women throughout the world, depended on their men for maintenance. This *fadl*, in other words, was sociological rather than divine. Some of the Qur'anic verses must be placed in their sociological context in order to understand them properly.

Maulana Azad also tried to explain the true spirit of this verse with reference to its sociological context, though he did not use these words, rendered *qawwam* as *bandobast karne wale* (ie, who manage the affairs of women). He also renders the word *fadilat* as superiority of men over women in some respects. Men, for example, work hard to earn a living for the whole family.

But both Muhammad Asad and Maulana Azad agree that if the women rebel against their men, they can, if necessary, beat them. The Arabic word used for this is *wadribuhunna*, [ie, beat those (rebellious) women]. However, Ahmad Ali of Pakistan renders it as having sexual intercourse (in Arabic language *daraba 'ala* is used for ■ male camel having sexual intercourse with a female camel). The noted lexicographer of the Qur'an, al-Raghib, also mentions that *daraba fahl al-naqata* means the stud camel coupled with the she-camel [see al-Raghib's *Mufradat al-Qur'an*, Urdu Tr. (Lahore, 1971), p. 611]

Thus according to Ahmad Ali the Qur'an does not give permission for wife-beating at all.

But most of the classical commentators agree that after taking all the measures to persuade her if she continues to be recalcitrant, she can be given ■ light beating, not to injure but to chastise. Before

we take up the question of permissibility of beating up or not, we would like to throw some light on the words *qanitat* (meaning obedient women) and *nushuz* (rebellion). These too are key words in the verse.

*Qanitat*, as pointed out above, means obedient. But the question is — obedient to whom? Most of the classical or conservative commentators render it to mean obedient to their husbands and if they are not obedient to their husbands, they need to be admonished or chastised. Some commentators, however, render *qanitat* to mean obedient to Allah, or to the immutable laws of Allah. Imam Raghīb, however, translates it to mean obedient to their husbands (Raghīb, *ibid*, p. 870). Maulana Azad translates it as *ita'at shi'ar*, ie, one who is obedient but leaves it vague whether obedient to husband or Allah (See *Tarjuman al-Qur'an*, op.cit., pp. 456-57). Imam Fakhr al-Din al-Razi, a great commentator on the Qur'an, clearly says that *qanitat* means *muti'at lillah* (ie, obedient to Allah). Tabari, on the other hand, quotes a number of authorities to say that *qanitat* means *muti'at*, ie, simply obedient, without specifying whether to Allah or to their husbands. However, he also quotes a number of authorities to the effect that it means obedient to both Allah and their husbands (see *Tafsir Tabari*, op.cit., vol. IV, p. 59). He also quotes some authorities to the effect that it means being obedient to one's husband. Thus, unlike others, Tabari tries to cover the entire range of meaning as deduced by different authorities on the meaning of the Qur'anic verses. The word *qanitat* has been interpreted differently by different persons in keeping with one's own value-system in a conjugal relationship. Those who are inclined to give equal status to both render it as 'obedient to Allah' and those who consider man as superior, 'being obedient to husband'. And those who tread the middle path render it as being obedient to both Allah and their husbands.

Now we come to the word *nushuz*. What does it exactly mean? How was it understood by the Prophet's companions then? *Nushuz* literally means to rise, protrude or stick out. By implication it also means to rebel, as pointed out earlier. Let us now see how various commentators understand the word *nushuz*. Imam Raghīb points out that *nushuz* implies rebellion against one's husband and befriending another man or developing illegitimate relationship (see Imam Raghīb, op.cit., p. 1052).

Tabari also hints at this meaning of this key word. He says it means rising against one's husband with sinful intentions (ie, developing an illegitimate relationship). He also extends its meaning to turn against one's husband with animosity and turning her face away from him. He also says that the literal meaning of *nushuz* is rising or protruding. Then he goes on to quote various authorities about the way they understood this word. He quotes some of them who thought it means animosity of husband and sinning against him (through illegitimate relationships) (See *Tafsir Tabari*, op.cit., vol. IV, p. 62). Zamakhshari, a noted commentator of the Qur'an, says *nushuz* means defying one's husband and sinning against him (*an ta'sa zawjaha*). Ahmad Ali (ibid.) translates it simply as being 'averse'. Muhammad Asad (ibid.) translates as 'ill-will' and offers the following explanation for his translation: 'The term *nushuz* (lit. 'rebellion' — here rendered as 'ill-will') comprises every kind of deliberate bad behaviour of a wife towards her husband or of a husband towards his wife, including what is nowadays described as 'mental cruelty'; with reference to the husband, it also denotes 'ill-treatment', in the physical sense, of his wife. In this context, a wife's 'ill-will' implies a deliberate, persistent breach of her 'marital obligations'. Thus Muhammad Asad is quite fair to women's cause and includes in *nushuz* both husband as well as wife. Imam Fakhr al-Din Razi says *nushuz* could be by word (*qawf*, or by deed (*fal*). When a wife is impolite towards her husband it is by *qawf* and when she refuses to sleep on his bed or does something like disobeying him it is by *fal* (ie, deed).

Parvez, a modern commentator from Pakistan, says that *nushuz* applies to both, wife as well as husband. And if the husband is also guilty of *nushuz*, the Islamic system will punish him too in the like manner. Parvez as well as another jurist from Pakistan Maulana 'Umar Ahmad 'Usmani in his *Fiqh al-Qur'an* point out that this Qur'anic verse has used general words *rijal* (men) and *nisa'* (women) and not husband and wife. So *nushuz* should not be interpreted as rebellion of a wife against her husband and hence the husband, through this verse, is not being given the right to punish his wife. The punishment, if any, will be awarded by an Islamic court.

Maulana Azad (ibid.) renders *nushuz* as *sarkashi* (ie, recalcitrance or rebellion) and ascribes to the wife alone. Maulana

Muhammad Ali, a Pakistani commentator, translates it as 'desertion' by wife rather than rebellion. Thus he says that if you fear desertion then punish them. Yet another commentator from Amritsar, India (who wrote before partition), Khwaja Ahmaduddin, renders it as *sarkashi* and *qanun shikani*. (ie, recalcitrance and law-breaking). Thus he adds law-breaking to the meaning of *nushuz*.

We have quoted various authorities and commentators for explaining the meaning of these two key words as they have serious implications for understanding not only the meaning of this verse but also for the rights of women. This verse, ■ pointed out earlier, is extensively quoted by the conservatives to show that women are totally subordinate to men and that men even can beat them up though as ■ last resort.

How about the words of the above verse *wadribulhunna* (beat them up, ie, wives)? Does it mean that the holy Qur'an permits husbands to beat up their wives if they are guilty of *nushuz*? Again there are serious differences among various commentators about this. It would be interesting to quote these commentators and authorities on understanding this significant word in this verse. Then alone we can answer the question: does the Qur'an permit wife-beating?

We start with Tabari. Tabari says that if they cannot be persuaded and do not give up their recalcitrance or rebellion and continue to defy the husband, bind them in their houses and beat them until they agree to fulfil their duties towards their husbands as prescribed by Allah. However, he also cautions men that the quality of beating prescribed by Allah should be such ■ not to hurt her. Tabari quotes numerous authorities to this effect, most of whom agree that beating is permissible but not with an intention to harass or cause her hurt or excruciating pain. He also quotes 'Abdallah bin 'Abbas (a prominent companion of the Prophet) that *darb ghayr mubarrak* (ie, beating without causing hurt or pain) means just striking with a toothbrush (*miswak*) or something like that. He also quotes the Prophet to the effect that the beating should not be hurtful (*ghayra mu'atlitharin*).

Zamakhshari (op.cit., p. 525) says that beating should not be hurtful and should not cause any injury, or break any bone, and the face should not be touched. He also emphasises that once she submits you should not harass her, and interprets the words

'Allah is most high and great' to mean that Allah's power on you is much greater than your power on those under you. He also quotes the holy Prophet to this effect.

Al-Razi (op.cit., p. 93) quotes Imam Shafi'i to the effect that 'beating is permissible but avoiding it is much better, Shafi'i quotes a *hadith* from the Prophet to the effect that those 'who do not beat their wives are better than those who do' and then Shafi'i concludes that it shows that avoidance of beating is better than beating. Al-Razi also quotes ■■■■ companions of the Prophet to the effect that in beating the wife one should not use *saut*, ie, a whip or a baton. It is preferable to strike lightly with a handkerchief. Al-Razi also adds that Allah also desires the least punishment. If by exhortation it can be achieved, there should be no need for beating. One should not resort to the extreme step as far as possible, according to al-Razi, the great Imam.

Maulana Azad, translates *wadribuhunna* as 'beat them' but puts the conditions that it should not bodily harm her and it should be merely as a warning against *nushuz*. He uses the words in Urdu *maar bhi sakte ho* (you can also beat her). Thus the Maulana, though quite modern and liberal in outlook, sticks here to traditional rendering of the word *wadribuhunna*.

Among other modernists, Muhammad Asad too renders this word ■ beating. He translates it ■ 'then beat them' but adds the following informative footnote:

It is evident from many authentic traditions that the Prophet himself intensely detested the idea of beating one's wife, and said on more than one occasion, 'Could any of you beat his wife ■ he would beat a slave, and then lie with her in the evening?' (Bukhari and Muslim) According to another tradition, he forbade the beating of any woman with the words, 'Never beat God's handmaidens' (Muhammad Asad quotes all the authorities here, AE).

When the Qur'anic verse authorising the beating of ■ refractory wife was revealed, the Prophet is reported to have said: 'I wanted one thing — and what God has willed must be best' (see *Manar* V, 74) ... (Muhammad Asad, op.cit., p. 110).

Thus it will be seen that Muhammad Asad also tries to impress upon his readers that beating a wife was most detestable and was permitted very reluctantly and should be used only in exceptional cases. Ahmad Ali of Pakistan, ■ pointed out earlier, does not agree with the rendering of *wadribuhunna* as beating, and

insists that it should mean sexual intercourse, and quotes, as pointed out above, Imam Raghīb, a prominent Qur'anic lexicographer, to this effect. Thus he translates the relevant portion of the verse ■ under:

As for women you fear are averse, talk to them persuasively; then leave them alone in bed (without molesting them) and go to bed with them (when they are willing) (emphasis added) (see Ahmed Ali, op.cit., p. 78).

Khwaja Ahmaduddin Amratsari, though radically differs in many respects from other commentators on interpretation of Qur'anic verses, here he agrees that *wadribulhunna* means beating. But then he brings to bear his own understanding and insists that a husband by himself is not permitted to beat his wife but it has to be entrusted to an administrative set-up. He also feels that no man (including husband) can beat a woman. It should be entrusted to some wise women (*sana'jhdar aurten*). He translates the relevant portion of the verse as under:

O administrators (*muntazimo*), the women whose recalcitrance and law-breaking you fear (that they harass their husbands needlessly), you exhort them (and if exhortation does not work) leave them alone in their beds (ie, tell their husbands not ■ go near them) and (if this also does not work) then beat them (ie, get them thrashed by some wise women) (tr. from Urdu by the author) (See Arshi, op.cit., p. 276-77).

The Pakistani commentator, Parvez, thinks that the meaning of *wadribu* (and beat them) is corporeal punishment in general and since the words used in the verse ■ 'men and women' (and not husbands and wives), the rebellion of women does not mean disobeying the husband and defying his will but defying the whole human system and neglecting their role as women in the society (either by refusing to procreate or taking to men's ways) and such rebellious women could, as a last resort (if they refuse to be persuaded to behave as women), be given corporeal punishment by a court of law constituted by proper authority.

### How to Understand the Verse in Our Own Time

We have surveyed above a range of opinions about the real meaning of the verse under discussion. The opinions differ widely. Whose opinion to accept and which interpretation of the verse to opt for? As pointed out, the above acceptance or rejection



of one or the other interpretation depends on one's point of view. If one stands for women's rights, one will reject any interpretation which subordinates women to men and one who thinks women must obey menfolk will accept ~~an~~ interpretation fitting into their way of placing women in the society. This is but natural.

One may then argue — can one read into a Qur'anic verse what one wants to? Are Divine commands not categorical enough? And should they not in such matters be communicated in a clear and plain language? Ideally it ought to and often it does. But social situations are often complex and changing. Moreover, social structures also influence the meaning. These factors must be borne in mind while interpreting the Qur'anic verses relating to women's rights. Islam originated in a fiercely patriarchal society. Before Islam, male-domination in Arabia was, like other societies, absolute and unquestionable. Despite this the Islamic revolution sought to empower women and recognised her as an individual legal entity and gave her various rights which were until then never given to her in her own right. It was not easy to get empowerment of women accepted by that society. Even eminent companions of the Prophet like 'Umar found it hard to accept it. 'Umar, it is reported, used to beat his wife. Ash'ath, another companion of the Prophet, reports that once he was a guest of 'Umar: 'Umar quarrelled with his wife and beat her. He then told Ash'ath that, remember three things which I have heard from the Prophet. One is that never ask man why he beat up his wife.'

Thus it will be seen that wife-beating was quite acceptable in that society. The Prophet tried his best to get justice to women but it was not easy. Also, ideally the Prophet or the Qur'an would have never approved of any kind of domination of women by men, but taking the prevalent ethos into account some concessions had to be made. However, a practical compromise should not be viewed ~~as~~ an ideological compromise. The Qur'an was fully aware that men were far more powerful and would view a practical compromise as an ideological compromise. The Qur'an and the Prophet were not, however, prepared for such an ideological compromise. Allah, therefore, made this clear in unambiguous words through the verse 33:35 already quoted above.

However, most of the male commentators brought to bear their selective bias and focused on what served their interests best. Thus the verse 4:34 was selected and they made out a case that

Allah had even permitted them to beat their wives if they refused to submit themselves to them. However, it was not possible to do this with a good conscience. So they stipulated that beating should not be harsh, and even striking with a toothbrush (*miswak*) or striking with a folded kerchief was thought to be enough. It (ie, striking), after all, symbolised male-domination.

When Islam entered a monarchical and feudal era, its values further got distorted. The first systematic commentary on the holy Qur'an was written by Tabari towards the end of the third and the beginning of the fourth century *hijra* (ie, 9th and 10th centuries AD.) By then Islam had entered the feudal era and the entire value-system had undergone a drastic change. Women came to be totally subjugated again. Moreover, most of the commentators were non-Arabs who were not acquainted with the original usage of the Qur'anic words. They relied on various *ahadith* for understanding the meaning of those Qur'anic words. But it was rather risky to depend on hadith literature as many *hadith* were forged by all kinds of people. Tabari himself relies mainly on various traditions which he found current in those days for explaining the meaning of various Qur'anic words. In very few cases he gives his own understanding of the Qur'anic words. Most other commentaries were written after Tabari's commentary.

It should always be borne in mind that social ethos do influence our understanding of various words. Our language reflects the social ethos. Since feudal ages social ethos have undergone great, even radical changes. Our understanding of the holy scripture will certainly be influenced by these changes. No wonder then that modern commentators like Muhammad Asad, Khwaja Ahmaduddin Amratsari, Maulana Azad, Ahmad Ali and others very differently understood the verse 4:34. They tried to explain woman-beating in a different way or denied it altogether. Ahmed Ali, for example, maintains that *daraba* does not mean beating but sexual intercourse (though Imam Raghīb hints at that meaning but does not explain the verse in the light of that meaning) and interprets the verse in that light. Others, while retaining the traditional meaning (ie, beating) maintain that it is not for husbands to beat their wives but for the courts to prescribe some form of physical or corporeal punishment.

During the medieval ages even the word *qatwam* was translated in a very different way. Zamakhshari, for example,

translated it as '*musaytarin*', ie, rulers and controllers, and Tafsir Jalalayn also rendered it as '*musaytarin*', ie, dominant. It is also interesting to note the reasons given by Kashshaf as to why men are rulers. He includes, among other things, reason ('*aql*'), firmness (*hazm*), resoluteness ('*azm*'), power (*quwwah*), horsemanship (*furusat*) and archery and that from amongst men there were prophets, theologians and warriors; they were capable of *jihad* (holy war) and that they could bear witness in *hudud* (punishments) and that they got greater share in inheritance, etc. These are the typical reasons given for superiority of man over woman throughout the medieval ages. Though these classical commentators were masters of Arabic language yet they could not discover the simple meaning of *qawwam* which the modernists discovered. According to the Arabic language, as modernists point out, *qawwam* is one who maintains and makes provision for the family (*qama 'ala al-nar'*).

Thus in today's conditions it will not do to maintain that according to the divine injunction one can beat one's wife. Even if *daraba* here means beating one's wife, it will have to be seen in its proper context. As pointed out above, there are contextual verses in the Qur'an as well as normative verses. When, particular controversies arose in the then society the Qur'an made its pronouncements, not ignoring altogether the prevalent ethos in the society. But elsewhere it also indicated its preference on the subject. Thus if permitting woman-beating was dictated by a situation, it also indicated elsewhere that both man and woman are equal in every respect. While the former was contextual the latter was normative. It is, therefore, necessary to read verses 4:34 and 33:35 together. To read 4:34 in isolation would be injuring the spirit of the Qur'an and its ideological intention to empower women.

The Qur'an has tried to do justice to weaker sections of the society. It has tried to empower them. It reluctantly permitted slavery as the situation demanded then, but also made it clear that all believers (*m'uminin*) are brothers which included slaves also (many slaves had happily embraced Islam) and thus required of these believers to treat their slaves in a humane way, and *manumitt* them, if possible. It also required emancipation of slaves by way of *kaffarah* (expiation for sins or the inability to perform certain obligatory rituals). The classical commentators and jurists often

take such verses in isolation from other verses which represent the true spirit of the Qur'an.

Ideologically speaking the Qur'an stands for empowerment of the weak (see 28:5) which include women. If at all it accepted some compromise in view of serious difficulties and stiff resistance from society, it should not be taken as eternal in application. Its real intention should be inferred from other relevant verses and then its correct meaning could be read. If this methodology of understanding the real intent of the Qur'an, as suggested above, is accepted, wife-beating in our times has no place whatsoever in the holy scripture, and equality of both the sexes should prevail.

## MUSLIM WOMEN, THE VEIL AND THE QUR'AN

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There has been a great deal of controversy about the veil in Islam. While some believers consider it ■ the commandment of Allah given in the holy Qur'an, others, Muslims as well ■ non-Muslims — specially the Westerners — consider it ■ ridiculous, if not a barbaric, practice. Many Muslims also argue that whatever the justification of *purdah* (ie, the veil) in the past, it has no relevance in the modern age at all. The orthodox Muslims, especially the 'Ulama, on the other hand, consider the veil for women as absolutely necessary and enforce it with all the rigidity they can. Thus we see in countries like Saudi Arabia that it is severely punishable for a woman if she goes unveiled. In that country she is not permitted to go out of the house alone. Some near male relative — *mahram*, ie, one with whom marriage is prohibited — must accompany her in the public place. It is for the fear that if unaccompanied, she might be teased or violated. In Iran too, she is required to wear a *chador*, ie, a long, loose garment to cover the head and slung across the upper part of the body, or at least ■ scarf with which to cover the head.

In some other Arab countries veils of various types are used by women. Some veil their entire face along with the head, exposing only their eyes. Some cover their head along with the nose and leave some portions of their face and eyes open. Some women leave only one eye open and cover everything else with *jilbab* (ie, an overall loose garment commonly worn by traditional Arab women). However, there are no uniform practices for veiling in the Arab countries. For example, in countries like Algeria, Egypt, Tunisia, Morocco, Iraq, etc., one will find strict veiling among traditional rural women along with quite modernly

dressed urban women. One finds many women in urban areas in these countries who go around in dresses with different hairstyles. Pakistan is no different in this respect. In Pakistan too, one finds Westernised women along with traditionally *burqa*-clad ones. In India too, it is not very different. Being a secular country, wearing the veil cannot be made compulsory. It is purely a voluntary act on the part of Muslim women. Of course, in certain cases, there can be coercive pressures from the local community.

In the Islamic countries of South-east Asia, the picture is very different. In these countries women traditionally have been playing ■ important economic role. There is hardly any Muslim household where women do not earn. Thus from the beginning they have been exposed to public life. Traditionally there was no Islamic veil among them at all. It was only after the Iranian revolution that some women began wearing the *chador*. Thus in Indonesia and Malaysia one hardly sees the kind of *burqa* or *hijab* one finds in other Islamic countries ■ societies. Only a few women now can be seen wearing the *chador* in urban areas. Thus it will be seen that veiling is more of a socio-cultural than purely religious practice. Yet religious argument in favour of the veil goes on vigorously. It is, therefore, equally important to know what the Qur'anic position is. The traditional Muslims always argue that it is a Qur'anic injunction to wear the veil and those women who do not observe the veil are guilty of a serious breach of Islamic law. We would, therefore, first like to throw light on relevant Qur'anic verses which ■ cited by the traditional Muslims in favour of the veil.

There are two important verses which deal with this aspect. The first one is verse 24:31 which is as follows:

And say to the believing ■ that they lower their gaze and restrain their sexual passions and do not display their adornment except what appears thereof. And let them wear their coverings over their bosoms, and they should not display their adornment except to their husbands or their fathers, ■ fathers of their husbands, or their brothers, or their sons, or the sons of their brothers' sons, or their sisters' sons, or their women, or those whom their right hands possess, or guileless male servants, or the children who know not women's nakedness. And let them not strike their feet ■ that the adornment that they hide may be known. And turn to Allah, O believers, so that you may be successful.



In a way the verse is quite clearly worded and there should not be much confusion about its meaning. But, like other Qur'anic verses, this also has been variously understood by different theologians. Let alone other theologians, there were differences in understanding it even by the companions of the Prophet. The celebrated commentator on the Qur'an, Muhammad Jarir Tabari, in his *Jami'al Bayan 'an Ta'wil Ayah al-Qur'an* gives various interpretations quoting some prominent companions. The key word which is controversial in interpretation is *na zahara minha*, ie, what appears thereof. The real controversy is about what part of ■ woman's body could be allowed to be exposed. Tabari gives eight different interpretations quoting eminent companions of the Prophet. Some companions felt that only her external clothes could be exposed and everything else, ie, the entire body including her face, hands, etc, should remain hidden. Another opinion is that she could expose the collyrium (of her eyes), her ring, her bracelets and her face. Yet according to another opinion, she could expose her collyrium and her cheeks. Similarly others held that she could keep her face and two palms open. Some thought that she could expose her *khizab* (*melendi*) and collyrium and her clothes. According to another interpretation quoted by Tabari she must hide her hair, her ear rings and her neck and bracelets. Another opinion he quotes permits the woman to expose her bracelets and her necklace but should hide her anklets, her hair and her shoulders.

Another great commentator of the Qur'an, Imam Fakhr al-Din Razi, in his commentary *Tafsir al-Fakhr al-Razi* (Dar al-Fikr, Lebanon, 1981, vol. XXII) also discusses in detail the above verse. He also holds the opinion that ■ believing woman can expose her face and two palms. He thinks that ■ must distinguish between a slave-girl (*amnat*) and a free woman (*hurrah*). According to Imam al-Razi, while for a *hurrah* it is permissible to expose only her face and two palms, for a slave girl, it is permissible to expose her whole body except what is between her navel and thighs as she is required to be exposed for sale in the market. He is also of the opinion that since homosexuality is also not permitted, there are some restrictions between man and man and woman and woman also. A man also cannot expose his thighs before another man and he cannot sleep with another man under one sheet of cloth or blanket. Similarly two women are also not permitted to sleep

under one piece of cloth. Imam Razi thinks that a free woman (*hurrah*) can keep her face and two hands open as she has to do so for buying and selling and for payment, ie, it is functionally necessary. He, therefore, thinks that looking at a woman's face with lustful intentions is not permitted. If one encounters a woman with whom he has no other dealing, it is required of a man to cast down his sight (*ghass al-basar*). He then quotes a few traditions of the Prophet to illustrate his point. He also permits to look at a woman with an intention to marry and quotes some traditions to this effect. But otherwise one can look at a woman only for some business deal and in which there is no intention for what he calls *fitnah*, ie, sexual mischief. Imam Razi also thinks it is necessary to look at a woman's face carefully during mutual deals so that he could later recognise her. He also deems it necessary to look at a woman's face carefully for purposes of bearing witness (which otherwise will not be possible). But one is not permitted to look at her face for sexual intentions.

Imam Razi permits looking at a woman's body for a *tabib*, ie, a doctor for curing her as it is necessary to look at the private part of a circumcised, by the circumscisor as it is a matter of necessity. He also thinks it is permissible to look at the private parts of fornicators or adulterers and adulteresses for the purpose of bearing witness. Similarly, it is also permissible, according to him, to look at the breasts of a woman to give witness in case of breast-feeding of a child. He also quotes a contrary opinion that it is for women to bear witness in cases of adultery and breast-feeding, etc.

Thus it will be seen here that there are several interpretations of the words *ma zahara minha* (ie, what could be exposed). One of the intentions of the Qur'an is obvious: that women should not unnecessarily invite men's attention through displaying all their sexual charms and adornments. That will lead to their own sexual exploitation. A woman should be dressed in a dignified manner. This is obvious from another verse which exhorts the wives of the Prophet that "stay in your houses and display not your beauty like the displaying of the ignorance of yore (ie, pre-Islamic period of ignorance)" (33:33). This verse also shows that the Qur'an intends to protect women from sexual harassment and exploitation. This is further obvious from yet another verse which is also used to prove the compulsion of the veil in the Qur'an. This verse (33:59) says,

"O Prophet, tell thy wives and thy daughters and the women of believers to let down upon them their over-garments. This is more proper, so that they may be known, and not be given trouble. And Allah is ever Forgiving and Merciful."

Many 'Ulama argue from the above verse that a woman is required to draw a veil over her face according to this verse. But this verse was revealed in particular circumstances. The women in Medina were required to go out during early morning hours to relieve themselves. Some eve teasers used to wait for them and tease them and when caught they would say they did not know that they were free women (*hurrah*), they thought they were slave-girls. It should be noted here that some of the slave-girls in Arabia at that time used to indulge in prostitution as their masters would coerce them to do so and hence many people often teased them. But it was very humiliating for the free women at that time to face such a situation. It is for this reason that the Qur'an required the believing women to cover their faces with their *jilbab* so that they could be recognised as free women (*hurrah*) and would not be teased.

Throwing light on this verse Imam Razi in his *Tafsir* says that if a man is accused (of bad conduct) he is not so much pained as a woman. In the *jahilliyah* period free women and slave girls used to go out unveiled. The rapists would follow them and tease them. That is why Allah issued injunctions for them to draw their garment over their faces (in order to be recognised). This was done so that they could be recognised (that they are free women and that they do not indulge in prostitution). He also makes it clear that here it is required to veil the face only for recognition and not that her face is not to be revealed and is to be treated as part of *satr* (ie, that part which is required to be hidden) (See Imam Razi's *Tafsir*, vol. XIII, p. 231).

Maulana Muhammad Ali, a noted Pakistani commentator, also is of the opinion that "the injunction to wear an over-garment is given here with the object that free women may be distinguished from slaves, so that they may not be annoyed and followed by men inclined to evil, who would come to know by this mark of distinction that these were pure and chaste women who would not tolerate insult or ill-treatment" (See Maulana Muhammad Ali, *The Holy Qur'an*, Lahore, 1973, p. 819). Tabari

also holds a similar opinion and quotes Mujahid and Qatadah, etc, to this effect (See Tabari's *Jami'a al-Bayan* vol. XXII, p. 46)

Muhammad Asad is another noted modern commentator of Qur'an. He also does not believe that a woman is required to observe the veil as most of the traditional 'Ulama believe. He characteristically translates the verse 24:31 as follows:

And tell the believing women to lower their gaze and to be mindful of their chastity, and not to display their charms [in public] beyond what may [decently] be apparent thereof; hence, let them draw their head-coverings over their bosoms. And let them not display [more of ] their charms to any but their husbands ...

And explaining "what may be apparent thereof" (ie, *illa ma zahara minha*), the controversial portion of the verse, Muhammad Asad observes, in a footnote:

My interpretation of the word 'decently' reflects the interpretation of the phrase *illa ma zahara minha* by several of the earliest Islamic scholars, and particularly by Al-Qiffal (quoted by Razi), ■ 'that which a human being may openly show in accordance with prevailing customs (*al-'adali al-jariyah*)'. Although the traditional exponents of Islamic Law have for centuries been inclined to restrict the definition of 'what may [decently] be apparent thereof' to ■ woman's face, hands and feet — and some times even less than that — we may safely assume that the meaning of *illa ma zahara minha* is much wider, and that the deliberate vagueness of this phrase is meant to allow for all the time bound changes that are necessary for ■ man's moral and social growth. The pivotal clause in the above injunction is the demand, addressed in identical terms to men ■ well as to women, to 'lower their gaze and be mindful of their chastity': and this determines the extent of what, at any given time, may legitimately — in consonance with the Qur'anic principles of social morality — be considered 'decent' ■ 'indecent' in a person's outward appearance. (See Muhammad Asad's *The Message of the Qur'an*, Gibraltar, 1980, p. 538).

Also, explaining the injunction for covering the bosoms with head-coverings, Muhammad Asad says:

The noun *khummar* (of which *khumur* is the plural) denotes the head-covering customarily used by Arabian women before and after the advent of Islam. According to most of the classical commentators, it was worn in pre-Islamic times ■■■■ or less ■ ■■ ornament and was let down loosely over the wearer's back; and since, in accordance with the fashion prevalent at that time, the upper part of ■ woman's

tunic had ■ wide opening in the front, her breasts were left bare. Hence, the injunction to cover the bosom by means of a *khimar* (a term so familiar to the contemporaries of the Prophet) does not necessarily relate to ■■ of ■ *khimar* ■■ such but is, rather, meant to make it clear that ■ woman's breasts are not included in the concept of 'what may decently be apparent' of her body and should not, therefore, be displayed (See Muhammad Asad, *ibid.*, p. 539).

Maulana Muhammad Ali also adds a long explanatory note to the verse 24:31 which is so crucial for the mode of dressing and display of certain parts of ■ woman's body. Explaining the verse, the Maulana says:

To guard the relations between males and females and to check a too free intermingling of men and women, the Qur'an now lays down another injunction in addition to that which requires both the sexes to lower their gaze when they meet each other. It requires women in particular not to display their adornment. There is a difference of opinion as to what *zinaat* means. According to some it includes the beauty of the body, while according to others it exclusively applies to external adornments. The ■■ of the same word in the concluding portion of the verse, let them not strike their feet so that the *zinaat* that they hide may be known, clearly supports the latter view, as the only adornment that can be known by the striking of the feet consists of external ornaments. But even taking the first view, there is a clear exception here, *illa ma zahara minha* — except what appears thereof or except that which it is customary and natural to uncover. Now in the first place it must be remembered that what is prohibited is the display of beauty, as elsewhere expressly indicated by the word *tabarruj*: "And display not (your beauty) like the displaying of the ignorance of yore" (33:33). As to what parts of the body the woman is required to cover and what she may uncover, the following summary of the earlier views relating to this exception given by Ij (ie, *Tabari*) should suffice: (1) it means the adornment of dress or the clothes that ■ woman wears; in other words, she is not required to cover the clothes she wears; (2) ■ means the adornment which the woman is not required to cover, such as collyrium, rings, bracelets and her face; (3) the exception relates to a woman's clothing and her face. After relating these opinions, Ij adds: The most correct opinion is that the exception relates to the face and hands. As an argument corroborating this opinion he says that, when praying, the woman is not required to keep her face and hands covered — hands up to the elbow — while she is required to cover the rest of the body. According to *Hadith*, the Prophet himself is reported to have told

Asma, his wife 'A'isha's sister, when she appeared before him in thin clothes, through which parts of her body could be seen: "O Asma, when a woman attains her puberty, it is not proper that any part of her body should be seen except this, and he pointed to his face and hands" (Sunnan Abu Dawud 31:30). This settles conclusively that Islam never enjoined the veil or covering of face. (See Maulana Muhammad Ali, *ibid.*, p. 685).

The Qur'an deliberately used vagueness by using the phrase *illa ma zahara minha* (ie, except what may decently be kept open). The understanding of this phrase will always be culture-specific. The Prophet also made it clear, as indicated by the *hadith* quoted above, that a woman can keep her face and hands (up to elbows) open. This was thought to be quite decent in the then prevailing Arab society.

It must be understood here that before the advent of Islam, the Arab society of Mecca was undergoing a transformation from a bedouin-oriented tribal society to rather resource-rich commercial society as Mecca had emerged as an international centre of finance and trade. A rich and fashionable commercial class, with consumerism as its aim, had struck roots in that society. Thus women from that class took to new fashions, exposing more and more of their bodies. As before the emergence of commercial society, there were only tribal traditions and customs, and no definite scriptural injunctions, there was not much restraint towards sexual morality in the society. When commercial consumerism emerged on the scene, the neo-rich of the society took to liberal display of a woman's body, her feminine charms, her adornments and her bodily curves. This display of feminine charms and sexually inviting adornments were abhorrent to those striving for spiritual perfection after the emergence of Islam in Arabia. However, Islam took a practical view and instead of banishing sex, it tried to strictly restrict it to within marital bond. For this men as well as women had to observe certain sexual morality. Both were required to be chaste and both were exhorted to what the Qur'an calls "*ghass al-basar*" (ie, lowering the gaze) which, metaphorically speaking, means not indulging in sexual encounters outside marital bonds. At the same time, women were also exhorted not to wear such dresses which will expose their sexual charms and reduce them to an object of men's sexual lust. She must protect herself from undue attention of men by wearing



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■ dignified dress and leave open only those parts of her body which should naturally remain open, ie, *illa ma zahara minha*.

However, it is also obvious that any scriptural text is read within one's socio-cultural context. An almost unanimous opinion of all classical commentators indicates that in their socio-cultural context, keeping the face and hands open was considered permissible. The Prophet also advised accordingly. Keeping the hair exposed was perhaps considered sexually inviting and hence prohibited. But the Qur'anic verse does not expressly state this. It has been deliberately left unspecified. However, if one takes a dynamic and growing view of society and also tries to situate a signification and meaning of scriptural text in the socio-cultural specificities thus exposing hair may not be considered sexually inviting in some socio-cultural context. But uncovering of the bosom is universally considered, at least in all non-tribal societies, ■ sexually inviting and hence the Qur'an specifically requires women to cover their bosom with what it calls *khimar*, ie, a piece of cloth generally worn by women and slung across their shoulders.

But then the question is — wherefrom did the tradition of covering the face of ■ woman emerge in Islamic, specially Arab-Islamic and Indo-Islamic societies? The question is not very difficult to answer. It developed with the emergence of feudalism. When the Arabs conquered the highly complex and feudalised societies of Eastern Roman and Sassanid empires, women, like in those societies, began to be subjugated once again. Islam, it should be noted, had modestly empowered women. Women were not in a very happy position before Islam. In many cases they were treated as chattels, though in certain areas, they enjoyed a degree of liberty and independence. But, on the whole, a woman's position was far from happy in the pre-Islamic Arab society. However, Islam empowered her and gave her rights which she had not known before and treated her as ■ independent entity. It was, by any reckoning, a great achievement.

But with feudalising of Islamic society, she again relapsed into a voiceless and powerless being. Numerous restrictions came to be imposed on her. She was confined to domestic chores and her role as ■ mother and bearer of children came to be glorified. Also, developments of large harems by rulers brought severe restrictions on their movements and the ways of rulers and ruling classes soon

trickled down and began to be imitated. Thus she was confined and veiled and this practice became widespread among nobles and *ashraf* (though women of lower classes and peasantry were required to work to supplement the household income and hence could not afford the veil). In view of this societal ethos, veiling women became a socially accepted norm and through re-reading the Qur'anic text, or inventing suitable traditions, it was sought to be legitimised.

The Qur'an, however, neither requires a woman to be veiled, nor confined at home. She is free to work outside her home and take part in all public activities. She is not required to be a role-model as a mother, though to be mother is her biological destiny. The Qur'an permits her to play an important role in whatever field she desires. However, she should not try to become immodest and dress in a way which ignores the sexual sensibilities of her socio-cultural context.

## IS WOMAN A HALF WITNESS ACCORDING TO THE QUR'AN?

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It is generally assumed by the Muslims that a woman is just a half witness according to the Qur'an and hence two female witnesses are equal to one male witness. This belief is based on a verse in the holy Qur'an and its interpretation by the *mufasssirun* (commentators) and the *fuqaha'* (the jurists). The verse in the Qur'an is as under:

You who believe! When you deal with each other,  
In transactions involving  
Future obligations  
In a fixed period of time,  
Reduce them to writing  
Let a scribe write down  
Faithfully as between  
The parties; let not the scribe  
Refuse to write: as God  
Has taught him,  
So let him write.  
Let him who incurs  
The liability dictate,  
But let him fear  
His Lord God,  
And not diminish  
Aught of what he owes.  
If the party liable is mentally deficient,  
Or weak, or unable,  
Himself to dictate,  
Let his guardian  
Dictate faithfully.  
And get two witnesses,

Out of your own men,  
 And if there are not two men,  
 Then a man and two women,  
 Such as you choose,  
 For witnesses,  
 So that if one of them errs,  
 The other can remind her. (See The Qur'an, 2:282)

Though the interpretation from the above verse that a woman is equal to half ■ witness was unquestioningly accepted in the past centuries when awareness about women's rights was hardly there, it is being rejected by the feminists today. Of course, those who follow the letter and not the spirit of the pronouncements, and also those who refuse to see the text in the context, still strongly believe that a woman, by the very divine design, is less capable than man and hence her witness is less reliable than man. And, therefore, two women will be required, as per divine injunction, to equal a man witness.

Today with increased consciousness for women's rights it will be difficult to accept this position. What is then real divine injunction? Is it Allah's intention to equate one man with two women in matters of bearing witness? Or is it an interpretation of the above verse by male jurists? Of course there ■ differing opinions. All orthodox commentators and jurists firmly assert that it is divine intention to treat one man equal to two women as far as the question of bearing witness is concerned. Not only that, they also assert that the witness given by two women will be valid only when accompanied by one man, not otherwise. If two male witnesses are not available then there should be one man and two women, not four women, ie, four women cannot replace two men. In any case the presence of one man along with two women is ■ must. This law is being enforced by many Muslim countries. However, now a debate is raging between the orthodox and modern interpreters of the Qur'an about the real import of the above verse. While the orthodox refuse to change their position about the value of woman as a witness, the modernists are challenging it. While the Qur'anic verse relates to financial matters the orthodox extend it to all matters including the *hudud* matters, ie, matters pertaining to theft, rape/adultery/fornication, false accusation, murder, etc. The modernists argue that the Qur'anic

verse specifically refers to financial matters only and its application cannot be extended to non-financial matters.

Yet some others hold that in matters of *hudud* women's evidence is not admissible at all. Thus we find in the *Hedaya*:

The evidence required in whoredom is that of four men. Evidence is of several kinds, is that of four men, as has been ordained in the *Koran*; and the testimony of a woman in such a case is not admitted; because *Zihra* says, 'in the time of the Prophet and his two immediate successors it was an invariable rule to exclude the evidence of women in all cases including punishment or retaliation;' and also, because the testimony of women involves a degree of doubt, as it is merely a substitute for evidence being accepted only where the testimony of men cannot be had; and therefore it is not admitted in any matter liable to drop from the existence of a doubt.

The evidence required in other criminal cases is that of two men, according to the text of the *Koran*; and the testimony of women is not admitted, on the strength of the tradition of *Zihra* above quoted. In all other cases the evidence required is that of two men, or of one man and two women, whether the ~~crime~~ relates to property, or to other rights, such as marriage, divorce, executorship, or the like. *Shafei* has said that the evidence of one man and two women cannot be admitted, excepting in cases relating to bail, and so forth; because the evidence of women is originally inadmissible on account of their defect of understanding, their want of memory, and incapacity of governing, whence it is that their evidence is not admitted in criminal cases.

Further, the author of *Hedaya* says, by way of objection, "Since according to *Shafei*, the evidence of women is originally invalid, it would follow that their evidence alone is not admissible even in a case of property; whereas the evidence of four women alone is, in his opinion, admissible in such case."

Then, it says, by way of reply, "The evidence of four women alone is necessarily admissible in cases of property, because of their frequent occurrence: contrary to the mode of proceeding with respect to marriage (for instance), which being a matter of greater importance and more rare occurrence than mere matters of property, cannot therefore be classed with them."

Then the writer of *Hedaya* says:

The reasoning of our doctors is that the evidence of women is originally valid, because evidence is founded upon three circumstances,

namely, sight, memory, and ■ capability of communication; for by means of the first the witness acquires knowledge; by means of the second he retains such knowledge; and by means of the third he is enabled to impart to the Kazeer; and all these three circumstances exist in a woman (whence it is that her communication of ■ tradition ■ of ■ message is valid); and with respect to their want of memory, it is capable of remedy by the junction of another; that is, by substituting two women in the place of one man; and the defect of memory being thus supplied, there remains only the doubt of substitution; whence it is that their evidence is not admitted in any matter liable to drop from the existence of a doubt, namely, retaliation or punishment; in opposition to marriage, and so forth, as those may be proved notwithstanding a doubt, whence the evidence of women is admitted in those instances (See *Hedaya* tr. by Charles Hamilton, Delhi, 1982, pp. 353-54).

The compiler of the *Hedaya* gives one more reason for non-acceptance of evidence of women alone. He says, "The evidence of four women alone, however, is not accepted (contrary to what analogy would suggest), because if it were, there would be frequent occasions for their appearance in public, in order to give evidence; whereas their privacy is the most laudable" (ibid, p. 354).

It will be seen from the extracts from the *Hedaya* that apart from the verse of the Qur'an, there have been many arguments invented by the male jurists to reject the evidence of women alone, or to treat their evidence in matters of *hudud* punishments too, as half that of men. The argument that if evidence of women alone is accepted then they will have to appear in public frequently and that is undesirable, is nowhere mentioned in the Qur'an, it has been invented by the jurists. Obviously, in those days, women had to observe strict *purdah* and were discouraged from public appearances, it was applied to tendering evidence also and their evidence alone was rejected on that ground. Such arguments are totally un-Qur'anic and must be rejected or at best seen in the context of time.

As pointed out above, the modernists do not accept validity of such arguments at all. The modernists generally maintain that the real intention of the Qur'an is not to reduce a woman's testimony to half that of a man but only to reinforce her testimony by the presence of another woman as women generally lacked financial experience in those days. Maulana Muhammad Ali thus remarks,



"As women did not take much part in business, and were therefore unable to understand the transaction, two women are required instead of one man" (See Maulana Muhammad Ali's *Holy Qur'an*, Lahore, 1973, p. 123).

Muhammad Asad, another noted commentator, observes, "The stipulation that two women may be substituted for one male witness does not imply any reflection on the woman's moral or intellectual capabilities; it is obviously due to the fact that, as a rule, women are less familiar with business procedures than men and, therefore, more liable to commit mistakes in this respect." Muhammad Asad quotes Muhammad Abduh from *Manar*, vol.III, 124 f (See *The Message of the Qur'an*, Gibraltar, 1980, p. 63).

This question has remained highly contentious and there has been no unanimity of views. If we give a serious thought to this question and reflect upon it deeply, it will be seen that it was only lack of experience in business transaction that the Qur'an insisted on having two women instead of one. The Qur'anic verse stipulating two women, in place of one man, refers to only financial transactions, nothing else. Thus even if one insists on literal adherence on the words of the Qur'an, one must apply this Qur'anic provision to matters of financial transaction only.

We would like to refer to the views of Fakhr al-Din al-Razi, the celebrated commentator on the Qur'an. He has discussed in detail about the Qur'anic verse on testimony of man and woman. He also discusses whether the testimony of a slave is valid or not. Some jurists like Shuraih hold that slave testimony is valid and he can be summoned to testify. But Imam Abu Hanifa and Shafi'i hold views otherwise. Thus it will be seen that on all such questions the commentators and jurists differed fundamentally from each other.

Then al-Razi refers to the Qur'anic verse on divorce requiring just two witnesses (65:2). It is interesting to note that here the Qur'an does not stipulate one man and two women but just two witnesses which also goes on to show that it is not a universal requirement but restricted only to financial transactions. Al-Razi stipulates ten conditions for a just witness. The witness should be free (ie, not slave), adult, Muslim, just and knowledgeable about the matter he is testifying. He should not be testifying for selfish ends, should not be testifying to get out of ■ difficult situation, should not be known for making a great deal of mistakes or for neglecting human qualities, and there should not be enmity

between him and the one he is testifying against. It will be seen that none of the conditions here disqualify a woman or maintain that her testimony will be half that of a man. In fact, all these qualities mentioned above can be possessed by ■ woman also.

Next, al-Razi discusses that part of the Qur'anic verse which says that one man and two women can testify. According to al-Razi the reason why two women should substitute one man is that a woman's temperament has coldness (*bard*) and dampness or moisture (*rutubat*) and this is the reason for her forgetfulness. The physiologist and medical experts will hardly agree with such statements today but that is how it was understood in those days. Instead of understanding the real intention of the Qur'an the commentators invented all sorts of arguments to justify their own understanding (which included anti-women prejudices). He then maintains that forgetfulness in one woman is much more than in two and that is why two women were stipulated in place of one. Thus while some jurists maintained that ■ woman's testimony was made undesirable, as otherwise she would have to appear publicly several times, the others maintained that she was forgetful by nature on account of excess of coldness and dampness in her physiology. These are all arguments invented by human beings and hence cannot be binding on us.

If one reflects on the verse of the Qur'an about the testimony of man and woman it is more than obvious that actually the testimony is to be rendered only by ■ woman, not by two. The other woman is only to remind her if she errs. Thus Justice Aftab Hussain of Pakistan observes:

The jurists differ whether ■ the time of examination in court both women should be present before the Qazi or the other should stay out until summoned for her ■ evidence. If both women are appearing simultaneously in court, obviously the role of one is to remind the other and the only witness is the one who is reminded to correct herself. If on the other hand ■ of them is to stay out to be summoned when the other ■ errs on account of forgetfulness and she merely discharges the function of the one who reminds, in that case also the evidence would be of the woman who had erred. If in either of the two cases the independent evidence of the two women is recorded, of whom erred and the other made a correct statement then the Qazi would in effect be relying upon the evidence of one woman and not two.

He further observes:

If the principle be that an issue can be proved by the evidence of one man and two women it would obviously mean that all the three should prove the matter fully. But if one of the three says that he does not remember or pleads ignorance, he cannot be held to be ■ witness. The exclusion of his evidence from consideration would reduce the number of witnesses to less than the required number. The principle of the essentiality of two male witnesses or of one male and two female witnesses before ■ court of law cannot be read in the verse on any principle. The principle must have been evolved by the jurists by resort to analogy or *Qiyas*... (See Justice Aftab Hussain *Status of Women in Islama*, Lahore, 1987, pp. 245-46)

Also, some commentators like Ibn Kathir point out that there is difference of opinion as to whether this verse is mandatory or recommendatory. An 'Alim like Ibn Taymiyya in his *Al-Turuq al-Hukmiyah* maintains that the verse is a directory because of a *hadith*. Justice Aftab Hussain rightly points out that there are traditions according to which the plaintiff's case can be proved by the evidence of one witness and the plaintiff's oath (*ibid.*, p. 247).

There are a great deal of differences among the jurists about evidence of women, and these differences clearly show how different jurists interpret divine injunctions differently and that these interpretations being human, cannot be binding and should be seen in the proper context. Thus Aftab Hussain points out:

According to ■ number of jurists of the early centuries judicial determination is allowed on the evidence of women except in matters of *Hudud* and *Qisas* (he refers to *Turuq al-Hukmiyah* by Ibn Qayyim, p. 92 for this purpose). The view which is generally held is that women cannot be competent witnesses in matters of divorce and *nikah*. Abu Obeid said on the authority of Abi Ubaid that a person divorced his wife thrice under the influence of liquor. The dispute was taken to Hazrat 'Umar. Four women appeared ■ witnesses and Hazrat 'Umar separated them, ie, made the *talak* effective. It may be noticed that there ■■■■ no male witness in ■ matter of *talak* although according to the Hanafis women are competent witnesses in all matters except *Hudud* and *Qisas*, including *nikah* (marriage) and *talak* (divorce), but only with a male witness and according to Malik and *Shafe'i* the evidence of women is not competent in matters other than those concerning property or matters subsidiary to it like trust, lease or license, etc. (*ibid.*, p. 257).

Maulvi Mumtaz Ali Khan also upholds in his *Huququn Niswan* that the Qur'anic verse on a woman's testimony does not in any way prove the inferiority of women compared to men. He is also of the opinion that since women in those days were kept ignorant and illiterate and never acquired adequate experience in financial matters, the Qur'an stipulated the need for two women witnesses in place of one man. It was only to remind the one if the other forgot or committed any error. Men being competent in such matters could remember better than women. Secondly, he maintains that this injunction of the Qur'an is optional and not compulsory for all the Muslims. Thirdly, he says that except the financial transactions the Qur'an nowhere else in matters such as marriage, divorce, *Hudud* (punishments), *Qisas* (retaliation), etc, requires two women's testimony in place of one man.

Fourthly, he argues that the Prophet has accepted one woman's testimony and refers to the *hadith* from *Sahih Bukhari* according to which Aqbah bin Harith had married a girl and then a woman came and informed him that she had suckled both man and woman and how can they marry in such an eventuality? According to this *hadith* the Prophet accepted the testimony of this woman and dissolved the marriage.

The Maulvi also feels that perhaps the requirement of two women witnesses is not on account of their non-competence but more likely because of their physical problems as when she is going through her period she may not be able to go to tender witness and the other may go and do so. And, according to the Maulvi Mumtaz Ali, this shows her superiority rather than inferiority since it is a woman who enjoys this privilege to send another one to testify in her own place (See *Huququn Niswan*, Hyderabad, nd, pp 19-20)

Another noted modern commentator, Parvez, of Pakistan also refuses to accept the inferiority of woman on this ground (ie, that her testimony is half that of man). He explains that the word *tudillu* used in the Qur'an does not mean to forget but rather means getting confused or becoming perplexed. He then refers to another verse in the Qur'an 43:18 which says, "Is one decked with ornaments and unable to make plain speech in dispute?" and concludes that since she is brought up in a different manner and circumstances she does not have clarity in disputed matters and hence needs someone to supplement her. But the Qur'an also

maintains that with proper training one overcomes such deficiency and therefore in verse 56:37 ■ woman living in paradise has been described as one having clear speech ('uruban).

Parvez also refutes the argument that since two women are required in place of one man, it is in itself an argument of men's superiority. He rhetorically asks that since two men are required by the Qur'an for testimony does it prove an inherent deficiency of man? Obviously not. Then why so in the case of women? The Qur'an does not consider one man's testimony to be enough; it requires two men's testimony for veracity of a written document. This does not mean that the Qur'an considers one man's testimony as incomplete. But the second man is required to supplement the first so that if there is any deficiency in his testimony it can be perfected by the other witness. It is only to make the testimony doubly sure. The purpose of having two men is not to declare men ■ incompetent or incapable. Similarly, according to Parvez, the Qur'an required two women only to make it sure that the testimony did not suffer from any deficiency rather than establishing her incompetence (See Parvez *Matalib al-Qur'an*, vol.III, Lahore, 1979, pp. 367-69).

Maulana 'Umar Ahmad Usmani, a noted jurist of Pakistan, has also argued at length in his book *Fiqh al-Qur'an*, volume III, that in many matters a woman's testimony alone is acceptable without a man. He quotes Imam Shafi'i's *Kitb al-Umm* wherein he says that he did not find any jurist he met opposing the contention that in matters like childbirth and other matters related to sexual defects of women, only a woman's testimony is acceptable, not of men (pp. 101-2). He also points out that in matters of *hudud* and *qisas* also a woman's testimony can be accepted and he points out the case of murder of the third caliph Hazrat Usman whose only witness was his wife Na'ilah and no one else. No one else was present at the time to testify the assassins of the third caliph.

Thus it will be seen that it is far from a unanimous position that a woman's testimony is half that of man in all circumstances and that for that reason a woman is in any way inferior to man. There are serious differences ■ this issue between jurists. The jurists in the medieval period also were not unanimous on the issue and many noted modern interpreters of the Qur'an do not accept the contention that a woman's testimony cannot be accepted in matters of *hudud* punishments and that in all circumstances one woman's testimony cannot be accepted.

## ISLAM AND POLYGAMY

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In India as well as in other Islamic and non-Islamic countries, polygamy is under attack by all those who support women's rights. Not only Islam but all religions and traditions and customs permitted taking of several wives. The Hindu myths and legends spoke of several hundreds of wives of some gods, for example, Krishna. Even some Kulin Brahmins used to have dozens of wives in medieval Bengal. The tribal tradition also permitted polygamy. There are instances of Indian tribals taking more than a dozen wives. Even women took the institution of polygamy as 'natural' or 'God-given' and did not fight against it. Polygamy came under attack only in the modern period, specially in the twentieth century. It was the Industrial Revolution which brought awareness among women of their rights and they began to demand equality of status with men. In feudal society the women had no productive role except in agriculture. They were confined to their homes. But with Industrial Revolution women were needed in increasing numbers for various types of jobs in urban areas also and thus they acquired greater role in production of wealth. Though poorer women always worked both in rural and urban areas, the upper class women were mostly confined to homes in a feudal society. It was considered against the prestige of a feudal lord that his womenfolk worked. But in an industrial society all categories of women began working, including highly educated women from upper classes. It is these educated middle class and upper class women who gave voice and ideology to women's movement. Their increased consciousness led to their refusal of a subordinate role and rejected their status as that of second sex. Polygamy naturally came under severe attack. The modern nation-states also made laws slowly and gradually empowering their female citizens. Polygamy began to be restricted or came under ban in many countries.

Islam had tried to usher in a just society. If one studies injunctions of the Qur'an with an unbiased mind, it will not be difficult to understand the fundamental importance that the Qur'an gives to the notion of justice. It talks of justice on various planes: social, economic, political and familial. In fact, it tries to make justice a way of life. As far as the economic justice is concerned it exhorts Muslims not to measure less, not to accumulate or hoard wealth and not to spend more than what is needed by way of basic necessities. In terms of social justice, it stresses again and again the necessity of establishing a just society. It also stresses the need for non-discrimination on the basis of caste, creed, race and colour. And in terms of political justice, it stressed the need for equal citizenship though its expression in history was severely restrained by the historical forms of political structures. Islam's political system was nearest to democracy but historical evolution had not until then reached the stage of democracy and hence the project for political justice was derailed much before it could be successfully launched. The democratic experiment of sorts launched during the period of *Khilafat-e-Rashidah*, ie, the period of rightly guided caliphs, itself came under cloud by the internecine wars in which more than a hundred thousand Muslims were killed. But these historical developments have their own logic and cannot be held against the particular religion and religious teachings.

Similarly, in matters of familial and sexual justice, history was not on the side of Islam. The Qur'an was determined to empower women but social norms, conventions and practices were dead set against it. Nevertheless, the Qur'an, conceptually empowered women. It was perhaps the first book in the world to declare unequivocally that "In accordance with justice, the rights of wives (with regard to their husbands) are equal to the (husbands') rights with regard to them, although men have precedence over them (in this respect)." It has also been translated as "And women have rights similar to those against them in a just manner" (2:228) (emphasis added). It will be seen that here also emphasis is on 'justness'. This was really a radical declaration in favour of women.

Polygamy was widely practised in pre-Islamic society. There was no limit for the number of wives a man could take. The early commentators of the Qur'an have recorded cases of some Arabs having up to ten wives. Also, like in other societies, in the Arab



society too, there was absolutely no notion of justice towards these wives. It was for the husband to decide whom he loved most and whom he showered his unlimited favours on. The wives had to accept their fate without any recourse to the process of justice.

The Qur'an does not accept this state of affairs. Since its basic project was to empower women, though within certain limitations of the given society, the Qur'an accepts the fact that women are victims of injustice in society. But empowering them in the absolute sense (giving them equal status with men in every respect) was not a practical proposition in that society. Thus the Qur'an adopted a middle course what we can term as *pragmatic-ideological* course. While it hinted at equality directly as well as inferentially, it sought solutions more acceptable to that society which was dominated by men.

It is clear from the Qur'anic statements that polygamy was not a very happy solution as far as the Qur'an was concerned and yet it had to advocate it in a restricted manner. The Qur'anic pronouncements make it clear that it is reluctant to permit polygamy except with certain conditions, condition of equal justice to all the four wives being most important, among them. Thus in verse 4:3 the Qur'an says:

And if you have [ ] to fear that you might not act equitably towards orphans, then marry from among (other) women such as are lawful unto you — (even) two, [ ] three, or four; but if you have reason to fear that you might not be able to treat them with equal fairness, then (only) one — or (from among) those whom you rightfully possess. This will make it more likely that you do not do injustice.

In the above verse it is quite clear that the Qur'an is extremely reluctant to accept the institution of polygamy. But since it could not wish it away in view of the prevailing situation, it allowed men to marry up to four wives provided they did treat their wives equally fairly and if they could not fulfil this important condition, 'then one' or to marry those whom they rightfully possessed, ie, the slave-girls. Thus the intention of the Qur'an is clear: monogamy.

The classical commentators of the Qur'an, Tabari and Razi, point out that the main intention of the verse under discussion is to do justice both to the orphans as well as wives. The wards of the orphans according to Tabari and Razi would either not pay them their *meher* due and marry them thus doing injustice to them or

would mix up their own bad properties with the orphan girls' good properties again doing grave injustice with them. Thus the Qur'an allowed them to marry lawful women, other than these orphans, up to two, three or four so that no injustice was done to the orphans and their properties. Thus to protect the interests of properties of these orphans was as important as ensuring equal and fair treatment to women whom the men in charge of these orphans marry. Thus it will be seen that the Qur'an is eager to protect the interests of women and ensure justice to them whether as orphans or as wives.

Tabari, one of the most widely quoted commentators, and most respected, quotes different authorities to arrive at the real meaning of the verse. Tabari always quotes various opinions available to him about the meaning of the verse he writes his commentary upon. He quotes A'ishah, the Prophet's wife, that this verse was revealed in respect of a man who was in charge of a wealthy orphan, whom he intended to marry for the sake of her wealth though she did not like him and would have maltreated her. He also quotes others who maintain that this verse was revealed in respect of a man who married ten or more wives and then appropriated the wealth of the orphan in his charge when in need (as he had to maintain a large contingent of wives) thus depriving her of her own property. Thus the Qur'an, according to this interpretation of the verse, restricted the number of wives to four (so that the person is not tempted to misappropriate an orphan's property in his charge in order to maintain a large number of wives) and also required that if you cannot maintain these four wives also equitably, then marry only one. Yet another version quoted by Tabari is that people used to consider it a sin not to do justice to orphans but would not consider it a sin not to do justice to wives, and this verse required them to do justice to their wives, also by restricting their number from one to four. Tabari quotes yet another version according to which this verse tells believing men that it is as sinful to do injustice to wives as to orphans and hence marry four, but if you cannot do justice to them, then three, but if you cannot do justice to them, then two, but if you cannot do justice to them, then one, and if you cannot do justice to one also, then marry only your slave-girl. He quotes more similar opinions (See Tabari's *Jami'al-Bayan 'an Ta'wil Aya'i al-Qur'an*, vol.III, Beirut, 1988, pp. 231-236).

Similarly Razi, another distinguished commentator on the Qur'an, quotes various authorities to establish that this verse intends to do justice to women both as orphans ■ well as wives. Justice to women was central to this verse. He refers to ■ *hadith* narrated by 'Akramah that there was a person who had several wives and he had some orphan girls with him as well. When he spent all his money on his wives and was left with nothing he would take from the orphans their money and spend on him and his wives. Then Allah revealed this verse (4:3), ie if you fear you cannot do justice to the orphans, marry one, two, three or four. And also, if you cannot do justice to four wives, then only one. Imam Razi also points out that offering *nawafil* (ie, non-obligatory prayers) is better than marrying more than one woman or having *milk-e-yamin*, ie, slave-girls. Thus ■ this count also, according to Imam Razi, it is better to marry ■ and engage oneself in prayers or other noble causes (See Al-Fakhr al-Razi, *Tafsir-e-al-Kabir*, vol. V Beirut, n.d. pp. 178-184).

There is another verse (4:129) which goes even more against the practice of polygamy. The verse says:

And it will not be within your power to treat your wives with equal fairness, however much you may desire it; and so, do not allow yourselves to incline towards one to the exclusion of the other, leaving her in a state, as it were, of having and not having a husband.

Thus the Qur'an is quite categorical that it is not within the power of human beings to treat wives, more than one, with equal fairness. That is why the Qur'an gives practical advice: do not incline totally towards one wife leaving the other hanging as if she has no husband. Many Muslims take it to mean that since according to the Qur'an it is not possible to do equal justice to all wives, a husband should at least treat all wives, as fairly and equitably as possible.

Tabari takes it to mean that it is not possible for men to treat all their wives equally in matters of love and sex. He also quotes 'Umar, the second Caliph, who prayed, 'O Allah, I have no control over my heart, but except this (ie, equal love), I will try to do justice to all my wives.' Again, according to Tabari, the holy Prophet also prayed, 'O Allah, this is how I divide my time between the wives over which I have control, but do not blame me in matters over which you have control, not me' (see Tabari, *ibid.*, vol. IV, pp. 313 -315).

As for Razi, he argues, that as per this verse, equality of treatment between all wives is not possible and hence one is not obliged with what is not possible for him. Thus men are not obliged to treat their wives with equal fairness in matters of love and sex. He also quotes the M'utazilah (ie, ■ rationalist sect among Muslims) scholars to the effect that since man cannot be obliged with what he cannot do, it is not permissible to have more than one wife. Thus according to the M'utazilah, it will not be possible to love all the wives equally and mere equal treatment in other matters like maintenance, etc, will not stand the test of equality of treatment, and hence more than one wife is as good as not permissible (See Al-Razi, *ibid.*, vol.VI, pp. 68-69).

Thus it will be seen that even the earliest classical commentators discussed at length the meaning of doing equal justice to all the wives and whether ■ was possible, and with the help of available *hadith* literature they also tried to find out as to how the Prophet himself understood these verses and what was his own practice and what was the understanding and practice of his eminent companions. After all, no commentator could ignore to discuss the implications of verses ■ forcefully emphasising equally fair treatment with all the wives. Thus it is obvious that permission to marry more than one wife was not an unrestricted one both in terms of quantity and quality. The idea of justice towards all wives was very central to the concept of polygamy in Islam.

It is also important to see what the modern commentators feel about these verses and how they interpret them. Thus Muhammad Asad in his *The Message of the Qur'an* says while commenting on 4:3:

As regards the permission to marry more than one wife, (up to maximum of four), it is so restricted by the condition, 'if you have reason to fear that you might not be able to treat them with equal fairness, then [marry only] one', as to make such plural marriages possible only quite in exceptional cases and under exceptional circumstances ... (See note 4, p. 101).

And commenting on the verse 4:129, Muhammad Asad says:

This refers to a case where ■ man has more than one wife—a permission which is conditional upon his determination and ability to 'treat them with equal fairness', as laid down in verse 3 of this *surah* (ie, 4). Since a man who is fully conscious of his moral responsibility might feel that he is committing a sin if he loves one

of his wives more than the other (or others), the above verse provides a 'judicial enlightenment' on this point by making it clear that feelings are beyond a human being's control: in other words, that the required equality of treatment relates only to the outward behaviour towards and practical dealings with one's wives. However, in view of the fact that a man's outward behaviour towards the other person is, in the long run, almost inevitably influenced by what he feels about that person, the above passage read in conjunction with verse 3, and especially its concluding sentence, imposes a moral restriction on plural marriages (See *The Message of the Qur'an*, *ibid.*, p. 130.)

Another noted Pakistani commentator, Maulana Muhammad Ali, appends a long note ■ verse 4:3. He observes:

This passage permits polygamy under certain circumstances; it does not enjoin it, nor even permit it unconditionally. It may be noted here that the explanation of this passage ■ generally understood is based on a report contained in the *Muslim*, according to which 'Ai'shah understood this verse as meaning that if guardians of orphan girls feared that by marrying them they would not be able to do justice to them, they should marry other women. This explanation, even if the report is taken to be authentic, requires the insertion into the passage of a number of words which the original does not contain, and ■ the meaning is much more clear, and more in consonance with the context, without the addition of these words, the interpretation given below is preferable. It is admitted that this chapter was revealed to guide the Muslims under the condition which followed the battle of uhud, and the last chapter deals with that battle. Now in that battle 70 men out of 700 Muslims had been slain, and this decimation had largely decreased the number of males, who being the breadwinners, were the natural guardians and supporters of females. The number was likely to suffer a still greater decimation ■ the battles which had yet to be fought. Thus many orphans would be left in charge of widows, who would find it difficult to produce the necessary means of support. Hence in the first verse of this chapter (4) the Muslims are enjoined to respect the ties of relationship ... In the second verse we are told that if they could not do justice to the orphans, they might marry the widows, whose children would thus become their own children; and as the number of women was much greater than the number of men, they were permitted to marry even two or three or four women. It would thus be clear that the permission to have more than one wife was given under the peculiar circumstances of the Muslim society then existing, and the Prophet's action in marrying

widows, as well as the example of many of his companions, corroborates this statement. Marriage with orphan girls is also sanctioned in this passage, for there were the same difficulties in the case of orphan girls as in the case of widows —

Another modern commentator from Pakistan, Parvez, draws a similar conclusion in his commentary on this verse (4:3) in *Matalib al-Furqan*. He says, commenting on this verse, that if such conditions arise — for example, due to war — that number of men is reduced in society and the number of orphans increases, specially the number of widows, and there is no other reasonable solution, or if some such individual cases arise (whose case will be decided by the society, and not by individuals themselves), then permission may be given for more than one wife from amongst these widows for giving protection to them. This exception to the rule of one wife one husband is made under these circumstances. But if you cannot maintain justice between these wives, then follow the principle of monogamy (Vol.IV, Lahore, 1981, p. 276).

Maulana 'Umar Ahmad 'Usmani is also a Pakistani 'Alim but he takes a very different view from the traditional 'Ulama. He has thrown a detailed light on the question of polygamy in his *Fiqh al-Qur'an* which is worth mentioning here in some detail. Firstly, he deals with the root of the word *zawj* which in Arabic means spouse (wife or husband) or one another's companion. Both the spouses complement each other. Thus, according to him, *zawwaja* or *tazawwaja* means a man or woman married to another woman or man which implies two persons, one man, one woman. Thus the very meaning of the word *zawwaja* requires one man and one woman, not many women. Then he quotes the first verse of chapter 4 which says that Allah has created all of you from one soul (*nafs*) and from it he created its spouse and all mates were created from one being, one of the mates being female and another one male and it is how the species propagates itself. Thus from this verse also it is clear that nature prefers one female for every male.

He also cites from the Qur'an the story of Adam and Eve and shows that for Adam only Eve was created. The very first male created by Allah had only one wife given by Him. The Maulana also refers to the verses 53:44-45 and 75:36-39 and says that it is clear from both the verses that the work of creation by Allah is going on systematically and that he creates male and female together and creates one female for every male. This is normal and

it is only in extraordinary conditions that this rule changes. He also refers to the verse 4:20 which says, 'If you wish to have (one) wife in the place of another and you have given one of them a heap of gold, take nothing from it', and infers that the verse clearly says that if you want to have another wife, divorce the first wife. This means one can have only one wife at a time in normal conditions.

'Umar Ahmad interprets the verse 4:3 rather differently. According to him the verse says that if you fear that you cannot do justice with orphans and widows, then marry from amongst them those whom you like one, one or two, two or three, three or four. But if you fear that you cannot do justice (to more than one wife) then marry one. The Maulana feels that the word *yatim* does not mean orphan alone but it includes anyone left alone and includes young girls without a father, and also widows. Even Imam Abu Bakr Jassas Razi, an eminent Hanafi Imam says in his *Ahkam al-Qur'an* that *yatim* includes widows whose husbands have died. (Vol.II, pp. 57-58). Thus the verse 4:3 asks the believers to marry orphan girls or widows, either one, two or three or four, and only one, if the husband fears that he cannot do justice to all. (See Maulana 'Umar Ahmad 'Usmani, *Fiqh al-Qur'an*, vol.I, Karachi, 1980, pp. 4586-5000).

If we agree with Maulana 'Umar Ahmad 'Usmani's interpretation of verse 4:3, then the Qur'an does not permit more than one marriage at a time except with widows and orphans produced by war-like situations. In normal times ■ can have only one wife and the other verses of the Qur'an also hint at one husband, one wife only.

Abdullah Yusuf Ali, whose translation of the Qur'an has been widely accepted, makes ■ terse comment on the verse 4:3:

The unrestricted number of wives of the 'Times of Ignorance' was now strictly limited to a maximum of four, provided you could treat them with perfect equality, in material things as well as in affection and immaterial things. As this condition is most difficult to fulfil, I understand the recommendation to be towards monogamy" (See *The Holy Qur'an*, Hyderabad, n.d., vol.I, p. 131).

Referring to the verses on polygamy in the Qur'an, Prof.Fazlur Rahman, ■ noted Islamic scholar who taught at Chicago University, observes:

It is clear from the passages that the Qur'an is talking of polygamy in the context of treating orphaned girls who had come of age but to



whom their guardians were unwilling to give back their properties. Instead, they would like to marry their wards, so that they could continue to use their properties. Otherwise, they would resort to 'eating up' their properties, either by exchanging their good ones for bad ones of their own or by 'mixing up' properties. Many guardians' properties concerning their wards' properties — both boys and girls — is a theme the Qur'an addresses recurrently both in Mecca and Medina. It is clear that the first passage had broached a problem to which the second passage provided definite answers: Their guardians were allowed to marry them up to four — as a lesser evil to their unlawfully consuming their properties, if they were willing to do justice to their properties. The Qur'an of course, puts a rider to such permission of polygamy by making it conditional upon their doing justice among these women and by requiring that they marry only one, 'if you fear you cannot do justice.' (See "The Status of Women in Islam: A Modernist Interpretation" in Hanna Papanek & Gail Minault, eds.—*Separate Worlds, Studies of Purdah in South Asia*, Delhi, 1982, pp. 299-300).

Thus it is abundantly clear from the foregoing that the Qur'an never gave a general permission for anyone to marry up to four wives. Marriage with more than one woman was permitted on condition of justice at three levels: by ensuring proper use of properties of the orphans and widows, by ensuring justice to all the wives at the material level and also by dispensing equal love and attachment to all the wives. Of course there are different interpretations of the two verses on polygamy by various authorities. The classical commentators like Tabari, Razi, etc, maintain that to avoid malpractice indulged in by their guardians and their intention to marry their orphan wards to misappropriate their properties, the Qur'an permitted these guardians to marry up to four wives from amongst other women, and they quote some *hadith* to this effect. However, others like Maulana 'Umar Ahmad 'Usmani, Prof Fazlur Rahman and others say, with good reason of course, that the Qur'an permits marriage with more than one wife only with orphans and widows to safeguard theirs (ie, orphans and widows' properties) and not with any other women. Maulana 'Umar Ahmad 'Usmani has particularly argued in favour of such an interpretation with all the force of his scholarship.

My sympathies are with Maulana 'Umar Ahmad 'Usmani's interpretation which is not only rational but also fully supported by enough evidence from primary sources. Thus the argument by

some apologists of classical interpretation that polygamy is necessary to avoid sexual abuse of women are not on surer grounds. It is surprising that Maulana Wahiduddin Khan fully justifies polygamy even today by quoting data of excesses of women over man in Europe. He completely ignores the fact that the man-woman ratio in India is quite adverse to women (925 women for 1,000 men). Some of our apologists feel proud to quote from European sources ignoring reality nearer home. Secondly, and it is important to note, the Qur'an itself nowhere mentions that polygamy is being permitted to contain sexual immorality. It does not even hint at such a possibility. This argument has been invented only recently. Even classical commentators have nowhere advanced this argument of sexual promiscuity in the absence of polygamy. Thirdly, in order to uphold traditional values of male-dominated society, they completely overlook the real spirit of the Qur'an and its deep concern with justice at various levels. Sexual abuse or prostitution cannot be contained by merely allowing multiple marriages to man; it is not such a simple proposition. In India where the women-men ratio is quite adverse, there is abundant prostitution. Prostitution is more on account of poverty than the greater number of women compared to men. Thus it is very obvious that the Qur'an wanted to do full justice to women at various levels attacking the prevailing social values but men derailed the Qur'anic project through contrived interpretation of verses which hinted at monogamy. As a norm orphan girls' wards, according to Tabari and Razi, would either not pay them their *mehar* due and marry them thus doing injustice to them or would mix up their own bad properties with the orphan girls' good properties again doing grave injustice with them. Thus the Qur'an allowed them to marry lawful women, other than these orphans, up to two, three or four so that no injustice was done to the orphans and their properties. Thus to protect the interests of properties of these orphans was as important as ensuring equal and fair treatment to women whom the men in charge of these orphans marry. Thus it will be seen that the Qur'an is eager to protect the interests of women and ensure justice to them whether as orphans or as wives.

## DIVORCE IN THE QUR'AN AND THE SHARI'AH

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Divorce breaks marital relations and hence is always painful. It also determines the power equations between the two sexes. Who has power to initiate the divorce is very fundamental to this equation. It is maintained, and rightly so, that the Qur'an favoured weaker sections in the society and hence helped empower women. Who, then, did the Qur'an gave power to divorce? Man? Or woman? Or both? Did the Muslim jurists follow the Qur'anic spirit in compilation of the shari'ah laws? Or, did they have androcentric attitude in understanding and interpreting the Qur'anic verses on divorce? A careful study of the Qur'anic verses on divorce would reveal that the androcentric attitude of jurists did play an important role in formulating the divorce laws.

First, let us examine the Qur'anic position on divorce and then we will examine the juristic opinions on this question. First of all, I would like to make it clear here that I am not referring here to the forms of separation between husband and wife which were typical to the Arab society and which have been referred to in the Qur'an, ie, *Ila'* and *Zihar* and which are no more practised. We will refer here only to those forms of divorce which are practised universally by the Muslims.

It is important to note that generally Muslim jurists of all extant schools believe that it is the exclusive preserve of man to pronounce divorce. However, it is important to note that there is no such explicit statement in the Qur'an. It is inferred from the verse 2:237 (or he in whose hand is the marriage) arguing that only one in whose hand is the marriage tie, ie, the husband, can initiate the divorce process also. It is only an inference, not a divine ruling. Thus it is that Mohammad Asad, a noted commentator of the Qur'an, says, "This obviously relates to women who are divorced

without any legal fault on their part. The amount of alimony — payable unless and until they remarry — has been left unspecified since it must depend on the husband's financial circumstances and on the social conditions of the time" (*The Message of the Qur'an*, p. 54, Gibraltar, 1980). And when the woman initiates the divorce, she has to pay compensation to her husband (2:229) as it is she who is breaking the marriage contract.

Verse 2:229 is ■ quite important one on divorce. It accepts the right of both the marital partners to divorce. The verse says, "A divorce may be (revoked) twice, whereupon the marriage must either be resumed in fairness or dissolved in a goodly manner. And it is not lawful for you to take back anything of what you have ever given to your wives unless both (partners) have cause to fear that they may not be able to keep within the bounds set by God: hence, if you have cause to fear that the two may not be able to keep within the bounds set by God, there shall be no sin upon either of them for what the wife may give up (to her husband) in order to free herself."

Thus this seminal verse on divorce accepts the right of both husband and wife to free themselves from marital bond. If it is the husband who takes the initiative, he is restricted to pronounce divorce only on two occasions and can revoke it twice (thus there is no concept of three divorces in the Qur'an). And, since he takes the initiative in divorcing his wife, he cannot take back from her what he has given to her at the time of marriage (by way of gifts or *mehier*). But if the wife wants to free herself from marital bondage, she has to pay up her husband and she cannot claim any provision for herself.

Commenting on the above verse, Muhammad Asad observes:

All authorities agree in that this verse relates to the unconditional right on the part of the wife to obtain divorce from her husband; such a dissolution of marriage at the wife's instance is called *khul'*. There exists a number of highly authenticated traditions to the effect that the wife of Thabit bin Qays, Jamilah, came to the Prophet and demanded a divorce from her husband ■ the ground that, in spite of his irreproachable character and behaviour, she 'disliked him as she would dislike falling into unbelief after having accepted Islam'. Thereupon the Prophet ordained that she should return to Thabit the garden which he had given her as her *dower* (*mehier*) at the time of their wedding, and decreed that the marriage should be dissolved ... In accordance with these traditions, Islamic Law stipulates that whenever ■ marriage is dissolved at the wife's

instance without any offence ■ the part of the husband against his marital obligations, the wife is the contract-breaking party and must, therefore, return the dower which she received from him at the time of concluding the marriage: and in this event 'there shall be no sin upon either of them' if the husband takes back the dowry which the wife gives up of her own free will (*The Message of the Qur'an*, op.cit., pp. 50-51).

The husband, if he pronounces divorce twice, on different occasions, and revokes them twice, he can take his wife back; but if he divorces her (finally), she shall thereafter not be lawful unto him unless she first takes another man for husband; then, if the latter divorces her, there shall be no sin upon either of the two if they return to one another — provided that both of them think that they will be able to keep within the bounds set by God: for these are the bounds of God which He makes clear unto people of (innate) knowledge (2:230).

This requirement that a man can divorce his wife twice (on different occasions) and, if he divorces her thrice, he cannot take her back unless she marries another man and he divorces her, arose from specific situation ■ it ■■■■ when during the Prophet's time, a woman came and complained to him that her husband divorces her and when her 'iddah period comes nearer he takes her back and threatens to repeat this until she dies. Thereupon this verse was revealed and divorce on the part of husband was limited to two and if he pronounced it the third time, the wife would be separated from him for good until she married another husband and he divorced her, then only she could go back to her first husband. Thus this requirement was made to stop this malpractice of divorcing one's wife any number of times and thus harass her, (See Tabari's *Jami' al-Bayan*, vol.11, p. 456, Beirut, 1988).

This practice being peculiar to Arabia of the Prophet's time, is hardly applicable to our time. This is more of historical interest now than of much juridical consequence in our times. However, as we shall see later, there is a problem in the contemporary Islamic world, more particularly in India, ■ Hanafi and Shafi'i Muslims permit pronouncing triple divorce in one sitting and as a consequence thereof, alienating the wife permanently according to this verse of the Qur'an. However, this is highly controversial and there has never been ■ unanimity on this form of divorce. But the Hanafi Muslims consider this form of divorce as valid.

However, if one goes by the Qur'anic spirit, it encourages man not to divorce in the first place, and if he does, he is more entitled to take her back during the 'iddah period. The Qur'an says, and the divorced women shall undergo, without marrying, a waiting period of three monthly courses: for it is not lawful for them to conceal what God may have created in their wombs, if they believe in God and the Last Day. And during this period their husbands are fully entitled to take them back, if they desire reconciliation but in accordance with justice, the rights of the wives (with regard to their husbands) ■ equal to the (husbands') rights with regard to them, although men have precedence over them (in this respect)." (2:228)

Thus the Qur'an would like the husband to take his wife back after pronouncing divorce during the 'iddah period (of three months) so that marital bond does not snap due to petty quarrels and angry exchanges. While the Qur'an, it is interesting to note, favours the resumption of marital relationship, it does not want woman to suffer any humiliation and hence gives her equal right, as stated in the above verse, to refuse to go back to her husband and opt for divorce. The Qur'an also effected another reform in the interest of women. In pre-Islamic times, the divorced women was ill-treated and the husband tried to retain her in his house against her will and maltreated her. The Qur'an therefore, requires that, "And so, when you divorce ■■■■ and they ■■ about to reach the end of their waiting-term, then either retain them in a fair manner or let them go in a fair manner. But do not retain them against their will in order to hurt (them): for he who does so sins indeed against himself." (2:231). A woman could stay in her husband's house only during the period of 'iddah so that if he wanted he could take her back during this period.

In the next verse, ie, 2:232, the Qur'an also admonishes relatives and parents of the divorcee who hinder her from marrying her former husband who wants to take her back and whom she also wants to marry again. This verse was revealed when a man did not allow his sister to remarry her former husband who divorced her and did not take her back until the 'iddah period was over but approached her brother for marrying her again after the waiting-period was over. The verse says, "And when you divorce women and they end their term, prevent them not from marrying their husbands if they agree among themselves in ■ lawful manner. This

is an admonition to everyone of you who believes in God and the Last Day. It is the most virtuous way for you and the cleanest."

In the following two verses the Qur'an deals with two typical cases of divorce in which a woman is divorced before the consummation of marriage and also before fixing *meher*; and in the second case ■ woman is divorced before consummation of marriage but after fixing her *meher*. Thus the Qur'an says, 'There is no blame on you if you divorce women while yet you have not touched them, nor appointed for them a portion (ie, *meher*). And provide for them, the wealthy according to his means and the strained according to his means, a provision in an equitable manner: this is a duty upon all who would do good' (2:236). That is, even if a marriage is not consummated and the dowry amount is not fixed, ■ divorcee should be provided for by the husband according to his financial capacity.

Next the Qur'an says: 'And if you divorce them before you have touched them and you have appointed for them a portion, then (pay) half of what you have appointed unless they forgo or he forgoes in whose hand is the marriage tie. And it is nearer to God-consciousness that you forgo. And forget not (that you are to act with) grace towards one another: verily God ■■■ all that you do' (2:237). Thus the Qur'an says to the husband that he can claim half the dower fixed if he divorces his wife before he touches her but it is much better if he forgoes this amount and leaves the whole amount with the divorced wife.

This theme is again taken up by the Qur'an in the beginning of chapter 65. The very first verse of this chapter says, 'O Prophet, when you divorce women, divorce them for their prescribed period, and calculate the period; and keep your duty to Allah, your Lord. Turn them not out of their houses — nor should they themselves go forth — unless they commit an open indecency...' Thus this verse basically requires that the divorce should be given for the three menstrual periods (or three months in the case of those women who have stopped menstruating or those, who for some reason, are not menstruating, or those pregnant, lay down their burden) and during this period she should not be thrown out of her husband's house, nor she herself should go away except when she commits an act of indecency. Thus she is given full protection during the period of *'iddah* after divorce. The next verse gives further instructions after the period comes to an end. This



verse says, 'So when they have reached their prescribed time, retain them with kindness or dismiss them with kindness, and call to witness two just ones from among you, and give upright testimony for Allah...' (65:2). Thus one should divorce for the period of three menstruation periods and keep his wife with him for this period so that reconciliation may be effected during this period. If reconciliation is effected she should be retained with kindness and if reconciliation is not possible, then she should be separated with kindness in the presence of two just witnesses.

The verse 6 of this chapter gives further instructions to protect the interests of a divorcee, specially when she is pregnant. It says, 'Lodge them where you live according to your means, and injure them not to straiten them. And if they are pregnant, spend on them until they lay down their burden, Then if they suckle for you, give them their recompense, and enjoin one another to do good; and if you disagree, another one will suckle for him.'

Thus according to this verse she should be made to live where her husband lives according to his means and if she is pregnant the husband has to pay them until the child is born. And, if they suckle the child, the husband should compensate her or find another wet-nurse. This Qur'anic verse was used by the authorities in President Sadat's time in Egypt to make it compulsory for the husband to buy a house in the name of his wife before the marriage could be solemnised. In the event of a divorce the house will remain in the possession of the wife. However, unfortunately, this progressive legislation was reversed later under pressure from conservative elements.

In chapter 4, verse 35, the Qur'an provides for arbitration before a decision for divorce is taken. The verse says, 'And if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they both desire agreement, Allah will effect harmony between them ...' As we saw in verse 65:1-2, divorce could be given for the period of 'iddah and then an attempt should be made for reconciliation and if reconciliation cannot be effected then finally divorce could take place. If these verses are read along with this verse (ie, 4:35) both sides could appoint arbiters and try to bring about harmony failing which the divorce could be recommended. The words 'Allah will effect harmony' clearly show that divorce should be resorted to only in extreme cases and as far as possible reconciliation should be brought about as it is Allah's desire.

Thus it will be seen that the Qur'an has been more than fair to women in matters of divorce. The Qur'anic provisions in this respect were a great improvement on the prevailing practices. In fact, seen in totality these measures are quite just even from modern standards. Every attempt has been made to protect divorced women's interests. But, unfortunately, the androcentric society violates these very clear pronouncements of the Qur'an and invents, through *hadith*, ways of effecting an easy divorce without protecting women's interests. The most unjust form of divorce has been the triple divorce in which the word divorce is pronounced thrice together and the wife gets irreconcilably divorced without any recourse to conciliation. Once these three words are pronounced, the divorced wife has to leave the husband's home and according to some jurists, she cannot even claim any maintenance. It is also known as *talaq-i-batta*, ie, irreconcilable form of divorce.

As we have seen there is no concept of the triple divorce in the holy Qur'an. The Qur'an makes provisions for two divorces ('divorce can be pronounced twice'). The very concept of triple divorce was a pre-Islamic concept. During *jahilliyah* (ie, pre-Islamic period of ignorance) when women had hardly any recognised or well-defined rights (though some elite women did exercise certain rights), such a form of divorce was widely prevalent. According to one *hadith* in *Nasa'i, Kitab al-Talaq* the Holy Prophet was informed that a man had pronounced triple divorce to his wife at one time. Getting very angry, the Prophet stood up and said, "Do you make fun of Allah's book when I am amongst you?" The triple divorce remained strictly banned during the Prophet's time, during the reign of the first Caliph Abu Bakr and for two and half years during the second Caliph 'Umar's reign. However, he enforced it in the third year of his reign when people began to misuse it. Thus we find ■ *hadith* in *Muslim, Kitab al-Talaq* from Ibn Abbas who said that in the time of the holy Prophet and Abu and the initial two years of 'Umar, the second Caliph, triple divorce was taken as one. Then 'Umar said that people made haste (in pronouncing triple divorce) in which they should have been cautious. So why not we apply it to them, and he applied it to them. Thus from this *hadith* it is clear that 'Umar enforced triple divorce, in view of certain circumstances, not as ■ matter of principle.

'Umar had certain reasons to do it. He cannot be said to have changed the *shari'ah*. It was, as pointed out by Ibn Qayyim, a noted jurist of 14th century AD, that 'Umar did not effect any change in the Shar'i position of triple *talaq* (ie, he did not allow it as a measure permissible by the *shari'ah*) but enforced it as a measure of punishment. 'Umar was well known in applying certain punishments like burning down wine-shops, awarding a punishment of 80 lashes to drinkers and to extradite them, etc for which there were no precedents in the Prophet's *sunnah*.

However, the Orthodox Hanafi and Shafi'i jurists rely on certain *hadith* (Prophet's traditions) to justify the triple divorce in one go. For example, they quote a *hadith* from Darqutni, *Kitab al-Talaq* which is as under:

(Ibn 'Umar says) I said: O Messenger of Allah! Had I given three *talaqs* would it have been permissible for me to revert to my wife? He said: no, she would have been separated from you and it would also have been a sin.

But Ibn Qayyim has, however, convincingly shown in his *Ighathat al-Lahfan* that ■■■ of the narrators of this *hadith*, Shueb, is controversial and his reliability is under a cloud of suspicion. And Imam Bukhari has described another narrator of this *hadith* — Ata Khorasani — as weak. Again, the *hadith* pertaining to Rukanah is often quoted to justify three *talaqs* in one sitting. The *hadith* is ■■■ follows: "Rukanah said I went to the Prophet and said I gave *talaq-e-battah* (ie, irreconcilable divorce) to my wife. The Prophet inquired, what was your intention? I said one *talaq*. The Prophet said, do you say so on oath? I said, yes on oath. The Prophet then said, whatever your intention (ie, it is only one *talaq* and you can go back to your wife).

This *hadith* is cited to prove that the Prophet made it sure before allowing Rukanah to go back to his wife that his intention was to give one *talaq* only. In other words, Prophet would not have allowed him to take back his wife if his intention would have been to give three *talaqs*. But this *hadith* is also far from being authentic. One of its narrators, Zubayr bin Sa'id, has been described by Allamah Ibn Hajar 'Asqalani as, loose narrator, ie, he is not reliable. Allamah Qayyim has also described it as 'not correct'. Imam Bukhari has also described it as 'weak' (*da'if*).

On the other hand we have another version of *hadith* of Rukanah. We find in *Musnad Ahmad* a *hadith* narrated by Ibn

Abbas ■ follows: "Rukanah bin Abd-e-Yazid gave three *talaqs* to his wife in one sitting. But he felt very sorry for this. He asked the holy prophet about it. The Prophet asked him, how did you divorce? He said, I gave her three *talaqs*. He asked again, did you give in one sitting? He replied, yes. The Prophet said it has the effect of one *talaq*, you can take her back, if you like" (*Musnad Ahmad*, vol I, p 265). Though the commentator of *Musnad Ahmad* Muhammad Shakir, has described this *hadith* ■ correct, one of its narrators, Muhammad bin Ishaq, has been severely criticised by *hadith* scholars and also the terminology used 'in one sitting' is later innovation. It is important to note that there never was any unanimity among the Muslims on this question. Many jurists accepted the validity of triple divorce whereas many did not. The second Caliph 'Umar is considered ■ having enforced three *talaqs*. Muhammad Husayn Haykal, an Egyptian scholar, writes in his *al-Farouq 'Umar*. "It is 'Umar's own *ijtihad* (creative opinion) with which other jurists differed with him. A group of scholars from our own times from Islamic world also differed with him. It is neither reflection on 'Umar nor on those who differ from him. The fatwas which 'Umar and other companions of the Prophet issued were based on their own opinion and ■ was not the only truth. If they were right then it was from guidance from Allah and if they erred, it was of their own. 'Umar used to seek pardon from Allah from this (ie, possibility of error)" (Vol II, Egypt, nd p 286). Imam Razi, a celebrated exegete of the holy Qur'an says that a large number of '*Ulama of Islam* have maintained that even if *talaq* is pronounced two or three times it will be one only. This is more probable since what is prohibited is harmful. And those who maintain that (three divorces) take place are striving to resort to corrupt and harmful practice and it is inadmissible and it is obligatory to maintain its inadmissibility. (*Tafsir-e-Kabir*, vol II, Bairut, 1980, p 260)

Ibn Taymiyyah has also maintained in his *Majmu'al-Fatawa*, vol II, p 71 that triple divorce is inadmissible and it is not in keeping with the teachings of the Qur'an and *sunnah*.

What is worse some jurists maintain that triple divorce, even if pronounced in a state of inebriation, will be valid and wife will be separated from him permanently. Hafiz Ibn al-Qayyim has, however, in his book *Zad al-Ma'ad* (vol IV, p 40, 41) maintained that in the state of inebriation divorce will not be valid. According

to him Allah has said in the Qur'an, do not go near *salah* (prayer) in the state of drunkenness until you know what you say (4:43). This proves that one who is in a state of drunkenness cannot be relied upon. Usually seven reasons are given for accepting validity of *talaq-i-sukran* (divorce in a state of inebriation) and Ibn a-Qayyim has effectively refuted them all. Also, it depends on how heavily drunk a person is. If one is heavily drunk and does not know what is the implication of what one is saying such a divorce cannot be valid under any circumstances.

Thus it will be seen that if one goes by the Qur'an and the *sunna* every care has been taken to see that justice is meted out to a divorced woman. But if one goes by opinions of certain jurists, one is on very sticky ground. In fact, in India, triple divorce which is highly controversial is widely practised. It is essentially un-Islamic and must be abolished sooner than later. The Muslim women ■ stressing for the abolition of triple divorce but still it remains valid and Muslim Personal Law Board is refusing to abolish it.

It is far from settled that only the husband has the right to pronounce a divorce. In all the verses on divorce in the Qur'an, nowhere is it stated that ■ divorce shall be pronounced only by the husband, though he too can. However, in the patriarchal society of the Arabs, divorce was usually pronounced by the husband and this attitude was reflected in the Qur'an also as it had to reflect the prevailing social reality. But since the Qur'an was above all meant to be a book of rightful guidance it did not accept divorce ■ the absolute right of man only as it came to be believed in the later *shari'ah* compilations.

In fact, it vastly improved and humanised the divorce procedure. It is obvious that women are weaker compared to men and they suffer more in the event of a divorce. While accepting the need for a divorce in certain circumstances, it tried to make it less painful by requiring men to either retain their wives with fairness or leave them in goodly manner (*bi ihsanin*). These words are pronounced by the *Qadi* at the time of *nikah* also. As woman suffers more at the time of divorce Qur'an required man to make material provision for her when divorcing.

In fact, the Qur'an treats both man and woman judiciously in the act of divorcing. Marriage being a contract between two equal partners, if man initiates a divorce he has to compensate his wife by making provision for her (2:241), ie, "And the divorced women, too, shall have (a right to) maintenance in ■ goodly manner: this is ■ duty for all who are conscious of God."

## ISLAM AND FAMILY PLANNING

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New issues keep on emerging in a continuously changing society. Religion, if it is more than a set of rituals and prayers, and it wants to stay relevant to these issues, must respond creatively to these issues. Otherwise religion would be nothing more than a set of rituals and dogmas, relevant or irrelevant. This, however, does not mean in the least that religion should become a plaything in the hands of those who want to bring certain changes in keeping with their own personal desires. Changes too, cannot be arbitrary. They must be based on certain positive fundamental principles and values. Any change which violates these principles and values cannot be accepted.

The holy Prophet of Islam was well aware of the changes which keep on taking place in society. Not only that, he was also aware of the fact that what is good in one place may be problematic in the other. Yemen is a short distance from Medina and there is also interaction between the two societies, and yet when the Prophet appointed his companion Ma'adh bin Jabal as Governor of that region he asked him — what will he do if he was confronted with a problem which was not dealt with in the Qur'an and the *Sunnah*? Prophet approved of it when Ma'adh said that he will resort to *ijtihad* (exerting one's mind or resorting to creative interpretation of the principles and values laid down by the Qur'an and *sunna*). Thus, it will be seen that *ijtihad* is a very important instrument of reapplying Islamic principles and values in the changed situation. In fact, it is an instrument of inner-dynamics of Islam.

Sweeping changes have taken place in the human society in the last two centuries. Human knowledge in non-religious spheres like physical and social sciences have made great strides. Our social paradigm has changed radically in many respects. New

questions as well as problems have arisen which need to be tackled. We cannot give the same answers even to the old questions in the changed circumstances. The religious principles and values will have to be creatively applied in the light of our experiences and in our context. The problem of family planning is not entirely new as its need was felt in earlier societies also in some other ways. However, today, in our context, it has not remained merely a matter of individual need and choice but has acquired a social significance. The society as a whole has to think about it and adopt a collective policy. In this respect, this problem has to be rethought in a creative manner.

# I

## Religion and Family Planning

Does any religion oppose family planning, and if so, why? The only ground on which family planning is opposed by any religion is sanctity of life. Catholic Christians also oppose it on this ground. The second possible ground to oppose it is that God provides for all those who are born. It is God's own responsibility to feed His creatures. Human beings should not intervene in God's affairs. We shall deal with both these objections in what follows in this section.

As for the first question that family planning violates life's sanctity, it will be seen that this objection is more superficial than real. The question of violating life's sanctity can arise only when there is an attempt to kill a living being. To bring life into existence, in a planned way or to put restrictions from life being born is basically different from killing or eliminating the existing life in any other possible way. In the former case, no killing is involved at all; it is not the same thing as killing a life. One cannot kill a non-existent being. One will also have to make a distinction between contraception and abortion. One can — and should — take objection in case of abortion on ethical grounds, particularly in an advanced stage when life has begun.

It is of course debatable whether abortion should be opposed in the absolute sense or in a relative sense. Should abortion be absolutely banned whatever the context or condition or should it be banned in certain conditions only? There can be different opinions. Does life begin immediately with fertilisation of the



ovum or at a later stage? The Catholic Church maintains that once conception takes place, life begins (God has created life in the womb) and hence abortion cannot be permitted. Islamic scholars and theologians on the other hand, believe, as we shall see further, life begins in the fourth month of conception and abortion before that cannot be objectionable or unethical. Of course it must be admitted that differences are deep and unresolvable. No wonder that even in the USA there are fundamental differences on this question between pro-choice and pro-life people. The former argue that the mother who bears the entire brunt of giving birth to a child and subsequently to rear it, should have a choice in the matter, ie, to retain or to abort the foetus. The mother's choice, from this perspective, is more important than anything else.

Pro-life people, on the other hand, argue that sanctity of life is more fundamental than anything else. Sanctity of life should precede all other considerations, including perhaps, mother's and child's health. I do not know what will be their attitude if not simply the mother's health but life also is in immediate danger if the foetus is not aborted. The Supreme Court of the USA of course has upheld its previous judgment favouring choice. But there is great deal of clamour in the USA on this issue and it has acquired overtones as an electoral issue too. Former President Bush, who was then seeking re-election for ■ second term, was facing a dilemma. In South Ireland too, where Catholics are in majority, abortion continues to be ■ highly controversial issue. Sometime ago when a girl was raped and she conceived she was not allowed by the government of her country to go for abortion to London. Then the Court had to intervene and allow her to go as ■ special case.

Thus, it will be seen that it is not ■ easy question to resolve. If attitudes are so hard ■ this question in the developed world, one can understand if religion comes in the way of some people in underdeveloped countries like India, where orthodoxy has a much greater grip on the minds and hearts of people. Also, poverty and illiteracy, apart from lack of consciousness, also become powerful blocks. We will throw some light on these aspects too in the coming pages.

There is one more question involved in practising birth control which is seen from ■ religious perspective. It is not only the question of sanctity of life, but also that of sexual ethics. Sans

procreation will not sexual intercourse become merely a means of pleasure ? According to orthodox position, sex cannot be permitted sans its purpose. It is again ■ ethical question and one can hardly find complete agreement ■ it. I think, sex can be permitted sans procreation within marital bonds. After all, one does not ban sex even if it is found after marriage that one of the conjugal partners lacks fertility. Also, one cannot ban sex past the age of fertility. Then again, sexual intercourse does not stop soon after the conception. It continues for a few months thereafter. Had sex been meant strictly for procreation, one will have to evolve a new marital code for sexual activities within the marital bond. Another question will also have to be answered, namely, procreation outside the marital bonds. Will it be permitted if sexual intercourse is used strictly for procreation but outside marital bond? Obviously not. Thus, it clearly shows that the position that sexual activities are meant strictly for procreation is rather untenable. Within the marital bond, sex will have to be permitted for pleasure too. Even the church has permitted the cycle method of birth control (ie, resorting to sexual intercourse during those periods when conception is unlikely to take place) which means sex sans procreation can be permitted.

Also while discussing this question, we have to bear in mind that we are not discussing exceptional cases wherein some strict control over sexual activity as pleasure is imposed. We are discussing, keeping the average person in mind. Thus, it will be seen that sexual intercourse for its own sake could be permitted within the limits of marriage. No religion should object to it and this is ■ key element in the practice of birth control. Sexual activity with one's conjugal partner should be permitted sans the objective of procreation with ■ easy conscience. If these questions are resolved within the framework of one's religion, a major obstacle is overcome. But as pointed out above, the question of family planning or birth control is no more merely a question of individual choice. It is a pressing urgency for the society as a whole and hence a collective decision with an easy conscience (ie, absence of any coercive measure) is needed. Creative reinterpretation of religious principles may greatly help in achieving this objective.

Yet another religious dilemma will have to be overcome. Orthodox religious beliefs, as pointed out above, require non-

intervention of any human agency in God's affairs. Creation of life and to sustain it through proper provision is God's responsibility and no human beings should prevent birth of a life for fear of lack of provision and starvation. This again is not a very tenable position. God has made many things available to us including all the natural resources. He has also endowed humans with intelligence and has provided them with divine guidance.

They have to utilise these resources with intelligence and planned manner so as to be available to all on an equitable basis. It applies not only to the present but also to the future generations. This can be done only if the human population is properly planned. The resources, as most eminent scientists have pointed out, are not inexhaustible. They must, therefore, be intelligently utilised, if this is not done, starvation might result. Thus, divine plans can work through the human agency and it is human responsibility to utilise natural resources in a planned manner. For planned utilisation, a number of human beings will also have to be controlled on earth at any given time. Thus, starvation might result on account of human folly. God or nature — whatever one chooses to call it — cannot be blamed for it. Procreation is a natural process but it can be controlled in a given context in the light of divine guidance which reaches human beings through God's chosen agents. It will result in satisfaction of human needs in just an equitable manner. Thus, it is not correct to say that human intervention is undesirable. God's desire could be fulfilled through human agents only. Uncontrolled human population might result in starvation of God's creatures. Some Muslim 'Ulama have taken this position as we shall see in what follows.

## II

### Islam and Family Planning

A section of orthodox 'Ulama today is putting forward the arguments against family planning on the lines described above. Some of them base their case on certain verses from the holy Qur'an. There are two verses which prohibit slaying one's children — 6:152 and 17:31. Both are almost similar. The verse 17:31 says: "And kill not your children for fear of poverty — We provide for them and for you. Surely, killing of them is a great

wrong." And the commentators of the Qur'an agree that the above verse refers to killing female infants immediately after birth for fear of starvation and social ignominy as in desert females were not considered strong enough to struggle for survival. The holy Qur'an has strongly condemned the pre-Islamic practice of female infanticide among the Arabs. On the other hand, the male-children are highly valued. The Arabs are very proud of possessing numerous male-children.

Many ill-informed Muslims quote the above verse and other similar verses to argue that Allah has condemned killing children for fear of starvation. There is no question of killing anyone, or taking life in any other way for fear of starvation. No ethical or moral conduct would approve of it. The Qur'anic ethics in fact condemn killing of any one person as amounting to killing the entire humanity. And it is in that spirit that the Qur'an strongly disapproves of burying daughters alive. "And when she was buried alive she asked for what sin she was killed." Similarly, the verses 6:152 and 17:31 also refer to this practice of female infanticide and urge upon the Arabs not to kill their daughters for fear of poverty as Allah will provide for them and for their children — male or female. Thus, these verses must be seen in that context, it would obviously be wrong to infer from them — that spacing of children and limiting them — that is what family planning is all about — is prohibited. Moreover, these verses specifically prohibit killing of children, ie, those already born and not those who do not yet exist or are even conceived. Contraception cannot be equated with killing of those already born. It was most humane on the part of the Qur'an to admonish those who killed their already born children, for fear of poverty. No civilised person would stand such cruelty to children.

Imam Shafi'i, one of the great Imams who founded the Shafi'i School of Islamic jurisprudence, thinks that one should not produce more children, if he cannot support them properly. He bases his opinion on one of the verses of the Qur'an relating to polygamy. It is verse 4:3, ie, 3rd verse of the chapter on Women (*Al-Nisa*). In this verse, the Qur'an, while permitting Muslims to marry up to four wives in certain conditions exhorts them to marry only one if they cannot meet ends of justice and then ends with the words (as generally translated), "This is more proper that you may not do injustice." However, Imam Shafi'i insists that it

should be translated as "This is more proper that you do not produce more children." The Qur'anic words which are being translated differently are '*alla ta'ulu*' which can mean both, ie, not to do injustice and not to multiply children. As far as our subject is concerned, the rendering of Imam Shafi'i is more relevant. The Imam's argument is that producing more children would make it difficult to provide them with what is *halal* (ie, legitimate and permissible) and also would make it difficult for parents to observe *hudud Allah* (limits prescribed by God, See Zamakhshari, *Al-Kashshaf*, vol 1, (Beirut, 1977), pp 497-98].

Thus, Imam Shafi'i was a man of vision and he could well anticipate the problems of producing more children. He makes, very important point, namely, that the Qur'an lays stress on the legitimate ways of earning one's living (*Halalan Tayyiba*). One should not resort to ways of earning not permitted by Allah, and Imam Shafi'i feels that if one produces more children, he will ultimately, in order to feed them, resort to *haram* (prohibited) ways of earning. Thus, producing more children would ultimately amount to earning the wrath of God.

However, it is heartening to note that Imam Shafi'i was not alone in thinking this way which favours limiting one's family. There were other eminent Islamic thinkers who thought alike. Imam Raghīb, a great lexicographer of the Qur'an, thought on the same lines. Referring to killing of children in verse 17:31, he maintains that killing in this verse does not necessarily mean putting one's children to death; killing here in fact means not giving them proper education. Ignorance, according to him, is intellectual death which is worse than physical death. Since the word *awlad* (children) includes both male and female, this explanation of the word killing (*qatl*) is more plausible. Thus, one should not keep one's children ignorant and kill them in an intellectual and spiritual sense. It can also result in malnutrition and retardation. Since having a large family also can result in all this, it is wise to plan one's family and limit it. Though Imam Raghīb does not put it that way yet one can easily draw that implication from what he says about the intellectual death of one's children. It would thus be seen that both eminent Islamic thinkers, Imam Shafi'i as well as Imam Raghīb, favour a small family, so as to provide it with proper means of material as well as spiritual development.

The *hadith* literature too, supports birth control both in direct and indirect ways. One *hadith* says: Those few (*qalil*) who are virtuous are superior to those many (*kathir*) who are undesirable. The implication of this *hadith* is obvious. It favours ■ small number of people who have better opportunities of moral and ethical development. Allama M H Alvi has also quoted this *hadith* in support of family planning. There is also a famous *hadith* which makes acquisition of knowledge compulsory for all Muslims — males as well as females. The word *faridat* (obligatory) is very important in this *hadith*. This is further reinforced by yet another *hadith* which says acquire knowledge even if it is available in China (China was considered farthest from Arabia in those days).

Both these traditions make it clear that it is obligatory for Muslims to give education to themselves and to their children even if they have to travel to far off places. But if means are limited and the family is large, Muslims cannot fulfil this important obligation. Thus, their Muslimness will remain incomplete. It is thus inevitable for them to keep the size of their families small, if they want to give the best possible education to their children. It is a pity that these important traditions of the Prophet ■ not being focused upon by theologians. Of course, some theologians maintain that by '*ilm*' (knowledge) in this tradition, is meant knowledge of Islam and not the worldly knowledge. Firstly, there is no available evidence to corroborate this point of view. The word '*ilm*' in Arabic has very wide connotations and embraces all varieties of knowledge, religious as well ■ worldly, physical as well as moral and spiritual. The Prophet is asking Muslims to go even to China for acquiring knowledge and China obviously was not the centre of Islamic knowledge. Thus, from this context also, it is clear that the Prophet meant worldly knowledge as well. But even if it is confined to religious knowledge, it would not be possible for parents to give higher Islamic knowledge to their children, if they ■ too many. '*Ilm*', it must be noted, implies moral and spiritual development also and it is not possible to impart higher knowledge and ensure spiritual and moral development if there are too many children.

Apart from an indirect support for ■ small family from Prophet's traditions, there are many traditions which lend direct support. Thus Imam Ghazzali, a Muslim theologian, philosopher and sufi of great eminence, mentions a tradition from the Prophet

which says: "Smallness of a family (*qillat al'ayal*) is a facility (*yusur*) and its largeness (*Kathirat*) results in *faqr* (indigence, poverty). This *hadith* needs no comment. The holy Prophet is clearly exhorting Muslims to have ■ small family as it would ensure more easiness and facility in life and avoid a large family as it would lead to indigence and poverty. The Prophet is also reported to have said that the best of people (*Khayar al-nas*) is one who has less burden of children on his back (*Khafif al-zahr min al-ayal*). On being asked what he meant by *khafif al-zahr* (light backed), he clarified one who has ■ small number of children. This tradition also hardly needs any comment and is directly in support of a small planned family.

Besides these, there are other traditions which support what is called '*azl*' which can be translated as birth control. '*Azl*' in Arabic literally means removal or dismissal or also separation and is also translated as *coitus interruptus*. But it need not mean only *coitus interruptus*. It includes all forms of birth control. We find '*azl*' being mentioned in ■ large number of *hadith* (traditions). Hazrat Jabir, a noted companion of the Prophet says: (i) We used to have recourse to birth control '*azl*' during the days of the Prophet, while the Qur'an was being revealed. (ii) We used to have recourse to it in the Prophet's age. He came to know of it but he did not prevent us from doing so. If it were something to be prevented, the Qur'an would have prohibited it. (The Qur'an prohibited expressly many evil practices prevalent in the Arabia during the lifetime of the Prophet.) The above tradition on '*azl*' has been reported in two authentic collections of *hadith Sahihain Bukhari and Muslim*.

There are many other traditions which favourably mention '*azl*' which indicates that it was generally practised during the holy Prophet's time for maintaining small families. However, it must be mentioned that there are also some traditions narrated by Prophet's companions like Ibn Mas'ud, 'Abd Allah bin 'Abbas which prohibit birth control. However, these traditions have been rejected by equally eminent Islamic savants like 'Allama Ibn Qayyim al-Jauzi who maintain that the traditions narrated by Ibn Mas'ud and 'Abd Allah bin 'Abbas prohibiting birth control are few and far in between and there is overwhelming number of traditions favouring birth control. In fact, another companion of the Prophet, Abu Sa'id Khurdi has narrated a tradition as follows: A Jew told me that '*azl*' amounts to burying alive on a smaller scale *wad khafif*. I then came to the holy Prophet, peace be on him, and



told him what the Jew said. The Prophet then said twice: the Jew lied, the Jew lied.

If true, this *hadith* clearly establishes that the Prophet never banned or disapproved birth control ('*azl*'). In fact, in traditions, support for '*azl*' is very strong and Ibn Mas'ud's view that '*azl*' (birth control) is *wad khafif* (burying alive on a smaller degree) hardly finds any support in the entire *hadith* literature. Tahavi, an eminent jurist, also supports Sa'id al-Khurdi's tradition in which the Prophet is reported to have said that the Jew who said birth control amounts to burying alive on a smaller scale was lying. Thus one can safely assume that '*azl*' (*coitus interruptus* or any other form of birth control) is permitted in Islam.

No eminent Islamic thinker, theologian or jurist has raised any objection to plan one's family or practise birth control. All the four founders of the Islamic schools of jurisprudence, Imam Abu Hanifa, Imam Malik, Imam Ibn Hanbal and Imam Shafi'i have either directly or indirectly approved of it. We have already discussed what Imam Shafi'i has to say about it. Another widely accepted Imam is Imam Abu Hanifa, who is largely followed by the Muslims in India. Imam Abu Hanifa is said to have written to one of his most eminent disciples, Qadi Abu Yusuf, "No doubt, excess of children creates great worries." This caution is contained in the series of directives, the Imam sent to Abu Yusuf. He also wrote to him that he should not marry till he was capable of supporting his wife. The great Hanifa work on Islamic law, *Hidaya* also says, "In the opinion of Abu Hanifa, birth control is permissible." The two disciples of Abu Hanifa, Qadi Abu Yusuf and Imam Shaybani, also held that birth control was permissible. But both thought that the wife's permission was necessary and according to them, Imam Abu Hanifa also thoughts so. In fact, this is much ■■■■ desirable. The mother must be consulted about the desirability of having a child or not.

Imam Ghazzali, in his magnum opus *Ihya al-Ulum* gives four grounds for '*azl*' namely (1) preservation of wife's beauty and charm; (2) protection of her life and health; (3) apprehension of a great deal of hardship (*kathrat al-hara*) on account of more children, and (4) financial hardship and shortage of income. It would thus be seen that Imam Ghazzali permits '*azl*' even to preserve a woman's beauty and charm — a very liberal ground indeed. Other grounds are what usually make birth control necessary for ■ family.

So far we have discussed the Sunni tradition. The Shia tradition too raises no objection or even specifically permits birth control. The great founder of the Shia *fiqh* (jurisprudence) Imam Ja'afar al-Sadiq has said that "Small family is a bliss." Not only this, Hazrat Ali whom the Prophet described as the "gate to the city of knowledge" held that not only birth control is permissible, but one can resort to abortion before life begins in the womb of the mother. He based his opinion on the following *Quranic* verses, "And certainly, we create ■■■ of an extract of clay, then we make him a small life-germ in a firm resting place. Then we make the life-germ a clot, then we make the clot a lump of flesh, then we make (in) the lump of flesh, bones, then we clothe the bones with flesh, then we cause ■ to grow into another creation. So blessed be Allah, the Best of Creators (23:12-14). Thus, Hazrat Ali concluded from the above verses that the moment *nutfah* (life-germ) is placed in mother's womb life does not begin. It begins only when the life-germ has passed through all the stages described above and enters the phase, "Then we cause it to grow into another creation" which, according to some, may happen in the fourth month and abortion before life is created could be permissible ■ it would not, until then, amount to burying alive.

Thus, it will be seen that almost all Islamic traditions permit 'azl with or without the permission of the wife. Sexual intercourse within marital bound is permitted in Islam even if its intention is not to procreate. It is not morally objectionable as in some other religious traditions. Of course in no case, intention should be to transcend Allah's bounds through excessive indulgence. It is for this reason that the Islamic world took up the family planning campaign without moral compunctions. In Egypt, government propaganda emphasise *usrah saghirah* (small family) and in Pakistan too one sees the slogan *chhota khandan khushhal khandan* (small family, happy family). Many prominent contemporary 'ulama have also issued *fatwas* in favour of birth control. Maulana Saeed Ahmad Akbarabadi, a noted Indian theologian, maintains that the purpose of marriage in Islam is not only to satisfy sexual impulse, but also multiplication of and contribution to the maintenance and growth of human population. Therefore, the resort to birth control cannot be permitted arbitrarily. But Islam can hardly be expected to shut its eyes to hard facts of life. Though birth control is not permissible without genuine reason, yet where

there is a genuine reason calling for such a step, it may be regarded not merely permissible but even compulsory (See Tahir Mehmood, ed, *Law in Modern India*, 1972, pp 114-122).

Thus, from whatever angle it is seen, birth control or family planning is not objectionable in Islam provided the purpose is moral and for the benefit of human society as a whole. In certain conditions, collective interest certainly precedes individual interest. Imam Taymiyyah, a great medieval Islamic thinker and jurist, has also propounded this doctrine. Thus, when unrestrained growth of human population causes severe problems in society, it would certainly be permissible to take suitable steps to bring the human population under control. Today, in India as well as in several other countries, population control has acquired great urgency. If stern steps are not taken, the society as a whole will suffer not only materially, but also morally and spiritually. As Maulana Saeed Ahmad Akbarabadi maintains, in such conditions, family planning is not only permissible, but should be made compulsory.

Earlier, we had referred to the doctrine of *ijtihad* (exerting to creatively apply Islamic principles and values in a new situation). A situation has developed in our country wherein a small family norm is a must. In this situation, the fundamental principle of Islam, ie, moral development and acquisition of knowledge should be creatively applied. If through unrestricted growth of population, moral development of human beings is endangered, steps must be taken, through family planning if necessary, to ensure that population growth remains under check. According to Islam, moral development and observation of *hudud Allah* is more fundamental than unrestricted growth of human population. And, if unrestricted growth of population endangers moral development, the latter will have precedence over the former.

There can be misuse of contraceptive devices. They may be used for preventing conception in extra-marital relationship. But then anything — even the noblest (like religion) — can be misused. Society has to evolve checks and balances to prevent misuse of these contraceptives. It is certainly not contraceptives which lead to sexual immorality. Sexual immorality would be found even sans these devices. This immorality needs to be contained on its own grounds. And it is only through strict sexual morality that one can ensure woman's dignity and upholding woman's dignity is fundamental to the teachings of Islam.

## MUSLIM PERSONAL LAW REFORM IN JORDAN

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I happened to visit Jordan in October 1993 at the invitation of the Crown Prince Hasan El-Talal to participate in an inter-faith dialogue. A number of eminent scholars and business-men from Europe, the USA, and the Arab World participated in the dialogue in which three principal communities, ie, Jews, Christians and Muslims were represented. It was quite an experience to participate in this significant exercise. I took this opportunity to also study the reforms and changes introduced in the Muslim Personal Law (*al-Ahwal al-Shakhsiyyah*) in that country. This was of great importance from the Indian perspective also as reforms in Muslim Personal Law is needed in India too.

I interviewed in this connection a couple of ladies who were in the know of issues connected with personal laws. I asked them about the status of women in Jordan and reforms in *ahwal al-shakhsiyyah*. I asked them specifically about the practice of *talaq-i-thalatha*, ie, triple divorce in ~~one~~ sitting. They told ~~me~~ it is no more practised. They also promised to get me a copy of the personal laws which they did subsequently. I benefited immensely from it.

What I was given was in fact not only the compilation of the personal laws but all other laws including the criminal ones. The compilation is titled *al-tashri 'at al-khassah bi 'il mahakim al-shar'iyyah*. This compilation also includes the *ahwal al-shakhsiyyah*. It was extremely interesting to go through the same. It gives all the aspects of Jordanian laws including the procedures to be followed. Before throwing a detailed light here on the relevant laws I would like to say a few things about the Islamic laws and women.

There are great misconceptions about the Qur'anic injunctions pertaining to the status of women for which Muslim theologians are more responsible than non-Muslim critiques of the *shari'ah*

provisions in respect of women. They often give an impression that women are inferior to men in every respect, that they are totally dependent on men, that they do not enjoy any freedom, that they have to do everything with the specific permission of their husbands. In fact, the women appear to be a mere appendage of men as father or husbands. It is not ■ if we carefully examine the Qur'anic provisions about the status of women.

There are a few other verses in the Qur'an which support equality of sexes. Also, what is noteworthy is that the Qur'an does not stop at simply giving equal status but concretely spells out ■ woman's rights in marriage, divorce, inheritance, property, maintenance, custody of children, etc. For example, marriage in Islam is a contract and her father cannot give her away in marriage without her specific consent. She can also stipulate various conditions in the marriage contract. This is ■ highly progressive measure. She also has the right to obtain ■ divorce whenever she likes and her right to *khul'a* is absolute as indicated by some of the Prophet's *hadith* (traditions). The Prophet is reported to have granted her *khul'a* merely on the grounds that she did not approve of her husband's looks. The Qur'an also gave her ■ share in her father's, husband's and children's property. Thus she is entitled to inherit as a daughter, as a wife and as a mother. Also, she can own property in her own right without any claim from her father or husband, or earn much ■ than him. It is for the husband to maintain her. She has no obligation to maintain herself and her children. She will not be obliged to maintain her husband even if he is in a financial straits though she can do so of her own free will. Her husband or any other male member of the family cannot prevent her from earning. According to the Qur'an, 'For men is the benefit of what they earn and for women is the benefit of what they earn' (4:32). Thus it is her right to earn.

However, it is highly regrettable that the male-dominated Islamic world has deprived her of what was given to her by the holy scripture of Islam. She is often forced into marriage without her consent, she can hardly exercise her right to *khul'a*, she is deprived, more often than not, of her share in inheritance, she is arbitrarily divorced by the husband by misusing the provision of triple divorce and so on. Her status has been completely downgraded and she has been totally subordinated to her father or her husband. In countries like Saudi Arabia she cannot even

venture out of her house without being accompanied by a male member of the family and she cannot even drive a car. This is quite contrary to what the Qur'an intends. And to legitimise these acts often such traditions are quoted which are contrary to the spirit of Islam and which are also often forged. Again some verses from the Qur'an are selectively referred to without going into the context in which they were revealed. As is well known the Qur'an was revealed in a society wherein women enjoyed a very low status. In other words, it was a fiercely male-dominated society. Under pressure of circumstances some concessions had to be made in favour of men but simultaneously Allah's true intention was also made known through other verses which are often ignored by the traditional 'ulama. This approach obviously needs to be corrected and the overall spirit of the Qur'an to be followed.

It is true that some Muslim countries, often under pressure from awakened women, have brought about suitable changes in keeping with the real spirit of Islamic *shari'ah*. In countries like Pakistan, Bangladesh, Malaysia, Egypt, Morocco, Libya, Lebanon, Iraq, Jordan, etc, a number of changes have been made in the traditional laws. In most of these countries polygamy has been severely restricted, if not abolished. Without permission of the court and without giving valid reasons, one can hardly take a second wife. Also, for divorce the Qur'anic injunction of arbitration is to be compulsorily followed. In India, unfortunately, the Qur'anic concept of arbitration is hardly followed. The Qur'an says, 'And if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they both desire agreement, Allah will effect harmony between them' (4:35). Thus it will be seen that the Qur'an is against arbitrary divorce. The Qur'anic injunction for the prevention of arbitrary divorce must be used to prevent a breach of marital relationship.

### Code of Personal Laws in Jordan

As pointed out above, Jordan is one of those Islamic countries which have effected reforms for improvement of status of women. This has of course been done within the framework of Islam. We will throw some light on the prevalent laws in the sphere of *ahwal al-shakhsiyyah*.

#### Law of Marriage

According to laws pertaining to marriage in Jordan no man can marry before the age of sixteen, and woman before the age of



fifteen (though according to modern standards, the age of marriage is still low and needs to be raised further). However, despite this rather low age of marriage, it is quite above that of child marriage as in case of child marriage infants suckling at the mother's breast can be married off. In orthodox Islam such marriages are still permitted. Also, according to the Jordanian law a hitherto young unmarried girl (*bakr*) requires a marriage guardian (*wali*), a divorcee or a widow (*thayyib*), above the age of eighteen does not need a marriage guardian and can, if she so desires, contract the marriage herself. However, in South Asia divorcees and widows also require a marriage guardian. The Jordanian law of marriage also permits a woman to put certain conditions in the marriage contract like her refusal to go out of the country after marriage or that her husband shall not marry another woman or that he will delegate his right to divorce to her (*talaq-i-tafwid*) and that she can divorce him whenever she wants or that he will make her stay in such and such a city or country. All these conditions will be valid and if the husband violates any or all of them, the marriage will stand annulled (*faskh*). It will be seen that such a provision of conditionality empowers woman to a great extent. Similarly the husband can also, if he so desires, stipulate similar conditions and if the bride-to-be accepts them, they will be valid and binding on her. Also, it is necessary that the husband be capable of paying her *meher-mu'ajjal* (ie, the part of *meher* to be paid immediately) and that he should be able to provide her with maintenance. It is also necessary for the husband to provide her with a house reasonably furnished with all necessities according to his status. The husband also cannot bring into the house provided for his wife his near or distant relatives without her specific permission except his parents if they are poor and incapable of maintaining themselves. Similarly, if the husband has another wife, he cannot make her stay in her house except with her specific permission. Also it is obligatory for her husband to provide her with reasonable maintenance and if he does not the Qazi will decide the amount of maintenance and compel him to pay and if he cannot, it will be for the wife to obtain a loan on his account. The husband will have to pay off the loan. Such reforms are highly needed in the South Asian Islamic countries. In India Muslim women are still struggling for introducing marriage contract with similar conditions. Though it



is perfectly in accordance with the Sunni Hanafi law it is not being permitted by the orthodox 'ulama.

### Laws Pertaining to Divorce

According to the Jordanian law ■ husband has the right to pronounce the three *talaqs* in three different sittings. He can give divorce either through oral pronouncement or through writing or through gesture if he is not able to speak or write. However, the divorce given in ■ state of inebriation will not be valid (in India, according to the Hanafi law it is taken as valid). Also, it will not be valid if it is given under pressure or by an imbecile. In other words, divorce can be given only in a normal state of mind. The Jordanian law does not accept three *talaqs* in one sitting. It will be treated only as one *talaq*. It should be borne in mind that Jordanian Muslims are also Sunni Hanafis and in Hanafi School of jurisprudence, three *talaqs* in one sitting is treated ■ valid. Thus it will be seen that the Jordanian authorities have reformed the law in this respect.

Also, divorce will be generally treated as *raj'i*, ie, reconcilable until three divorces (during the course of three months) are completed. During the period of waiting ie, *'iddah* the husband will have the right to take her back either by saying ■ or by doing ■ and without paying fresh amount of *meher*. Any divorce under the Jordanian law must be registered within fifteen days and anyone failing to do so will be liable to punishment as provided in the criminal code of Jordan. And the concerned department will inform the wife about the divorce within a week after registration of the divorce.

Similarly the woman has also been given the right to *khul'a*, ie, freeing herself from the marital bond. The condition for *khul'a* is that some compensation will be paid by the wife to the husband as she is desirous of dissolving the marital contract. However, if the wife is a minor, such compensation would not be needed. And when compensation is invalid, it becomes a reconcilable divorce (*talaq-i-raj'i*) and the husband cannot demand any compensation for this divorce from his wife. The compensation for *khul'a* could be the amount of *meher*, ie, the wife should return the amount of *meher* received by her at the time of marriage by way of compensation for *khul'a*. And if the husband and wife do not mention any compensation at the time of *mukhali'ah*, then both will have no responsibility for payment, ie, payment of any compensation by wife and payment of any maintenance by husband. And if both the parties specify that they do not desire any compensation then

separation between wife and husband will be in the nature of reconcilable divorce. But the maintenance during the *'iddah* period is ■ must except when the wife specifically agrees to exempt her husband from it in the *mukhali'ah* agreement. The compensation for *mukhali'ah* could also be in the form of suckling the child or meeting the expenses of bringing up the child for the specified period by the wife. But if the wife does not fulfil this obligation the husband can return to her or the wife will become indebted to the husband and she will have to pay off the debt.

The wife can approach the Qadi for separation from her husband if she comes to know that her husband has some serious defect like impotency or similar other defect. But if the wife knows about this defect before marriage or has no objection to the same after the marriage she will have no right to demand separation on that basis. If the wife comes to know after the marriage that her husband suffers from a disease like leprosy, syphilis or some such disease and cohabitation with him is not possible, she can immediately approach the Qadi with a request for a separation. The Qadi, after obtaining the opinion of experts in the matter can grant her separation. But if there is a possibility of curing the disease within a reasonable period of time he can delay separation for that period. But blindness and a handicap like lameness in her husband would not entitle her to separation (in fact, blindness should also entitle her for divorce unless she had specifically approved of it at the time of *nikah*).

The Jordanian law also makes provision for divorce in case of *mafqud al-khabar*, ie, when the husband is missing and there is ■ news from him or about him. If the wife can prove absence of her husband from the place of her marital residence for more than a year without any reasonable excuse or reason it is permissible for the wife to approach the Qadi for divorce. If the place of residence of husband is known the Qadi will write to him to return within a stipulated time period to his wife or take her to his new place of residence or divorce her. If the husband does not reply or does not present himself the Qadi can effect ■ divorce between the two. But if the husband's whereabouts are not known and the wife can prove on oath that her husband has deserted her the Qadi can effect a divorce. The wife can also sue for a divorce if the husband does not pay her the immediate part of *meher* (ie, *meher mu'ajjal*). The Qadi will give the husband one month's time for payment failing which he can grant divorce.

Similarly the Qadi can grant ■ separation to wife for non-payment of maintenance by the husband. First the Qadi will order enforcement of maintenance if enforcement is possible, ie, if husband's property, etc, can be attached. But if the husband is unable to pay for paucity of funds ■ if the husband refuses to pay maintenance despite his ability to pay the Qadi can grant divorce to wife. But if the husband asks for time the Qadi can grant time up to three months after which either the husband pays or the Qadi grants the divorce.

And if the husband is absent not for long and if he has the means from which maintenance can be paid to his wife, the Qadi will require maintenance to be paid from the husband's property, movable or immovable. The Qadi will fix the time within which he should return and take care of his wife. But if the husband does not return and provide the wife with proper maintenance the Qadi will grant her divorce. But this divorce will be *raj'i*, ie, husband can take her wife back if she so desires and if he can pay her maintenance. This is after the consummation of marriage. However, if the marriage has not been consummated it will be *talaq-i-ba'in* and he cannot take his wife back during the 'iddah period even if he can pay the maintenance.

### Divorce on Account of Breach of Relationship

If husband and wife quarrel and there is a breach of relationship between them either of them can sue for divorce in the Qadi's court. They must be able to show that one conjugal partner has harmed the other by word or deed and that with the conjugal partner peaceful existence is ■ longer possible. On receipt of such ■ plea the Qadi will try his best to effect a reconciliation. He would warn the conjugal partner to mend his ways and give at least a month's time for the same. However, if improvement of relationship is not possible the Qadi will entrust the matter to the arbiters (*hakamayn*) as required by the holy Qur'an. One arbiter will be from the wife's side and the other from the husband's. The arbiters should be just and capable of effecting a reconciliation. If proper arbiters are not available from amongst the people of husband and wife the Qadi can appoint suitable arbiters capable of bringing about reconciliation.

These arbiters will explore all possibilities of reconciliation and removing the causes of friction. The arbiters can also involve the neighbours in the process if that helps in any way. If they deem fit

they can also draw up a document of written agreement in order to bring about an end to the dispute and enable them to live as husband and wife. But if the arbiters see no possibility of effecting a reconciliation they will bring about separation. If the entire blame lies on the wife, separation will be brought about by making her pay compensation to the husband which would not be less than the amount of *meher* she received. And if the blame lies entirely with the husband they will effect *talaq-i-ba'in* and the wife can demand all her conjugal rights that are applicable if the husband divorces her of his own will. And if the arbiters find that both are to be blamed they will bring about a separation in a way that both will have to forgo something in proportion to the blame they are adjudged to share. If it is not possible to apportion blame it would be at the discretion of the arbiters to fix financial liabilities on both the partners.

There is yet another provision in the Jordanian law in favour of the wife. If the wife approaches the Qadi and complains that she has been divorced unjustly or without any proper reason the Qadi can decide to get her compensation from her husband. This compensation would not exceed one year's maintenance. This can either be paid in a lumpsum or in suitable installments fixed by the Qadi.

It will be seen that it is quite unlike in South Asia, particularly India, where a husband can give three divorces without any reason. What is worse, it would not be justiciable at all. The wife becomes entirely helpless in that case. In Jordan, on the other hand, there is complete remedy available to her which is in keeping with the provisions of the holy Qur'an. The Qadi, as shown above, can appoint *hakamayn*, can order suitable compensation for the wife, etc. In India all this is opposed vehemently by the 'ulama as if it is a great sin to take any such step in favour of the aggrieved wife. Once the husband pronounces the three dreaded words, everything is over for her. To say the least it is not only against the cannons of natural justice it is also against the true Islamic spirit.

Islam has been so fair to women that after the divorce she can, if she so desires, refuse to suckle her child without suitable payment of compensation by her husband and if he refuses to pay he will have to hire a wet nurse for the purpose. This has been provided for in the Jordanian law also. This provision has been made in the *ahwal al-shakhsiyyah* under the heading 'The right of mother to demand compensation for breast-feeding her child.' Similarly she has first

entitlement for custody of her children. But if she marries another man after the divorce her right to *hidanah* (ie, custody of child) is forfeited. And if there are more than one claimant for custody of child the Qadi will decide whom the child should be entrusted to. The Jordanian law also provides that the mother once given custody of her children, can take care of them until they grow to be adults.

### Provision for Grandchildren of Predeceased

The Jordanian law makes provision for the children of ■ predeceased father from the property of their grandfather. Normally, as per the *shar'i* law, the grandchildren have no right in the property of their grandparents if their father predeceases their grandfather. But according to the Jordanian law the grandfather will have to make a provision to the extent of one-third of his property in favour of the children of his predeceased son. This has been made obligatory for him. Thus the interest of the grandchildren from his predeceased son is fully protected. In other Islamic countries too such ■ provision has been made. It is regrettable that no such provision exists in the Muslim Personal Law in India.

Thus it will be seen that though other Muslim countries, under the pressure of changing times, are suitably reforming their personal laws, the 'ulama in South Asia, particularly in India are still resisting any change. The oft-repeated argument is that the Government of India should not begin to interfere in their religious laws. This argument does not carry much weight for the simple reason that no one is asking the government to interfere. What the advocates of reform are asking for is the 'ulama's own initiative in doing so. It would be nothing new. The earlier 'ulama had taken such an initiative. For example, the draft for Dissolution of the Muslim Marriage Act was prepared by Maulana Ashraf Thanavi, an eminent theologian, and others of his ilk. This was done to relieve those Muslim women of agony whose husbands were missing (*mafqud al-khabar*) and under the Hanafi law they had to wait much longer than under the Maliki law wherein they had to wait no more than 4 years before being granted divorce. Maulana Ashraf Thanavi took the initiative and drew up draft amendments in the Muslim Personal Law in this respect.

It is very unfortunate that the Muslim Personal Law Board in India totally refuses to bring about the necessary and pressing changes in the Muslim Personal Law in India. It does not want to

effect any change even in the case of triple divorce ■ one sitting which is nothing less than a curse for so many Muslim women. Triple divorce is a sinful form of divorce according to the Sunni Hanafi 'ulama and yet they do not want to abolish it. Few years back Maulana Abul Hasan Nadvi, Chairman, Muslim Personal Law Board, gave ■ statement that it is ■ crime to resort to triple divorce but nevertheless ■ is valid. It is strange that the Chairman and Members of the Muslim Personal Law Board do not want to take into account the sharp contradiction in their position. Thus triple divorce continues to be valid. Though the Muslim Personal Law Board agreed to abolish it, still it is valid among Sunni Hanafi Muslims.

We have seen that Jordan has effected necessary reforms and have abolished the triple divorce. The Jordanian Muslims are also Sunni Hanafi Muslims like those of India. They have also enforced the Qur'anic provision of what is called *tahkim*, ie, arbitration before effecting divorce. Thus the interests of women are fully secured. In India, the concept of *tahkim*, though clearly spelt out in the Qur'an, is hardly ever practised. Why should ■ go for *tahkim* when they are allowed to pronounce triple divorce? It is a highly unfair practice and is against both the Qur'an as well ■ the *Sunnah*, the two principal sources of the Islamic *shari'ah*. One reason for this lack of enthusiasm for change is lack of any pressure from below. The large percentage of Muslim women in South Asia are poor and illiterate and are not conscious of their Islamic rights as against their counterparts in Islamic countries. For example, the women in Pakistan are highly conscious of their rights and it was for this reason that Zia-ul-Haq could not, at the height of his campaign for Islamisation when all orthodox laws were being enforced, amend or abolish the Muslim Family Ordinance of 1962, promulgated by President Ayub Khan. The moment he thought of it there were demonstration by the Pakistan women and Zia had to retreat.

However, in India the Muslim middle class is extremely weak and a few educated Muslim women cannot force the Muslim Personal Law Board to opt for change. Also, there are other reasons too which are no less significant. The increasing communalisation of our society and politics has created resistance for any change as progressive changes create fear of loss of one's identity. Some surveys which the Institute of Islamic Studies, Mumbai, carried out in Mumbai, Delhi and Benaras also point in the same direction. A

number of educated Muslim women, some of them graduates and post-graduates, were asked questions about desirability of change in the Muslim Personal Law. Though they agreed that such a change was desirable yet most of them maintained that it involves the question of their identity. The question of identity becomes highly important in a communalised society where a particular minority's very existence is under threat.

The question of progressive reform should arise from within the community and not under pressure from any communal party. The BJP (Bharatiya Janata Party) is not doing any service to the cause of reform among the Muslims by communalising the issue. It is, on the other hand, doing the greatest disservice to this cause. The Shah Bano movement itself would not have assumed such proportions if the Muslim masses had not spontaneously responded to the agitation launched by the 'ulama.

Reforms are necessary and desirable and no society can meaningfully progress without such reforms from time to time. At times they become so urgent that ■■■■ can say reform ■■■■ perish but in certain circumstances the people for whom reforms are being advocated might feel reform and perish. Indian Muslims by and large do feel so today. It is therefore highly necessary to create an atmosphere of security and well-being for them so that an urgent sense of reforms can become meaningful to them. To demand radical changes in the present communalised political climate will only succeed in building up ■■■■ and more resistance.

Another important measure to create an appropriate climate for reform is to spread literacy — both general and Islamic — among the Muslim women. It is these women who generally suffer on account of the present personal laws and it is they who have to come forward for change. There is hardly any awareness of Islamic rights among the Muslim women. If somehow they are made aware of their Islamic rights, it can greatly help the cause of reform. One should concentrate on Muslim women's education. The feminist groups should give top urgency to this important project. Also, one should realise that uniform secular laws at best are a distant dream. Even if it is desirable it is hardly realisable. One should concentrate on what is realisable. The reformed laws are certainly realisable not in distant but near future. One should not sabotage this realisability for the sake of a distant dream, that is, uniform civil code.



## ISLAM AND LIBERAL REFORMS IN EGYPT

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Islam was a great reform movement in its own time. The Arab society, as is well known, was in a state of degeneration just before Islam. No wonder then that it was described as a *jahili* society and the pre-Islamic period as a period of *jahilliya*, ie, a period of ignorance. Islam brought the light of knowledge and the holy Qur'an described 'ilm as *nur* (light). Thus no wonder that the Islamic teachings came as a great enlightenment. Before Islam there were no laws, there were only tribal traditions and each tribe had its own traditions. Thus there was no uniformity of laws and traditions in the society as a whole ■ the society consisted of many tribes and each tribe had its own traditions. Thus there was a plethora of laws in a single society. Though pluralism is not bad in itself, there have to be certain standard norms in a society as a whole. It is these social norms which the pre-Islamic society lacked and hence it was designated as a *jahili* society.

In a pre-Islamic society there were no societal norms. Women suffered the most. They had no rights whatsoever. They were completely at the mercy of men. Men could marry as many of them as they desired and they could even inherit their stepmothers along with whatever they possessed. Women naturally had no right to inherit, no right over their own children. The Islamic laws gave them these rights. The Qur'an even went on to say that their rights were equal to their obligations. The women were recognised by the Qur'an as a legal entity which the European society did not recognise as such until the beginning of the twentieth century. Some European countries accepted women as legal entities as late as in the 1930s.

But social practices do not always conform to the norms and values. Human behaviour is determined by several

considerations, some of which, though contrary to these norms and values, are quite crucial to human behaviour. Social prejudices, patriarchal traditions, tribal and ethnic conventions, and personal interests together determine human behaviour, and this is true of collective social behaviour also. These factors prove far more crucial than the norms and values laid down by a religion or a political ideology, for that matter. No wonder these norms and values are adhered to by a few conscious and committed people. The rest follow the age-old traditions. These traditions have a tendency to reappear after the reform movement gets weakened or when the reformer is no more on the social scene.

Islam also suffered the same fate after the period of *Khilafat-e-Rashidah* which lasted for approximately thirty years after the death of the holy Prophet (PBUH – Peace Be Upon Him). When the Umayyad period began the pre-Islamic or *jahili* traditions began to reassert themselves. Not only the *jahili* poetry and cultural traditions were revived but also the *jahili* social traditions, norms and values. What was worse, many of these traditions intruded into Islamic jurisprudence too in the form of *hadith*. Thus these pre-Islamic traditions were sanctified. All sorts of *hadith* were forged in large numbers. The 'ulama tried to devise 'ilm al-*hadith* as well as 'ilm al-*rijal* but all this did not help much. Many weak and forged traditions did become part of Islamic *fiqh* (jurisprudence). Thus many reformist measures enacted by Islam were gradually undone and pre-Islamic traditions in the form of 'adat (customs) became an integral part of Islamic Law.

We also have to remember that every measure of reform is partly determined by the universal values and partly by the societal conditions prevailing at that time. Thus dialectics of normative and contextual nature finally determine the shape of the reformist measures ushered in by a reformer. The idealistic values give direction to society but this direction does not ultimately determine its movement; it is determined by many other factors, as noted above. When Islam spread to other countries it absorbed those influences which prevailed in those societies. The 'ulama tried to maintain its purity but they hardly succeeded. Thus each Islamic country happens to have its own little and great Islamic traditions. The little traditions, of course, include local traditions which are considered as an integral part of

locally practiced Islam. And these local traditions may run contrary to, in many respects, the Islamic values and norms.

### **Reform Movement in the Egyptian Society**

Egypt has been an Islamic country ever since it was conquered by the Muslims during the early caliphate period. It had a very old civilisation which has been one of the greatest civilisations of the world. Also, from the very beginning it has been a great centre of Islamic learning. Its Islamic university al-Azhar which was founded by the Fatimid Imam al-Mu'iz is one of the greatest seats of Islamic learning even today. The Islamic world can be justly proud of this Islamic seminary. It has given lead to the Islamic world. Since the nineteenth century, Egypt, particularly al-Azhar, has produced great Islamic thinkers who enacted many liberal reforms in their own way.

One of the great names which comes to our mind in this respect is that of Muhammad 'Abduh who rose to occupy the highest position of Sheikh al-Azhar. Muhammad 'Abduh was a disciple of another great thinker and activist, Syed Jamaluddin Afghani. Al-Afghani had launched a pan-Islamic movement in the nineteenth century. He was vehemently opposed to Western colonialism and wanted to unite all the Muslim countries in order to throw away the colonial yoke. He knew that this could not be achieved without imparting socio-religious dynamism to the Islamic world. The feudal traditions had struck firm roots in the Islamic countries which were in a state of stagnation and degeneration. One could not talk of challenging colonial powers without imparting liberal and progressive values to the Islamic societies. Also, there was a great need for modern education. Al-Afghani emphasised this and much more to impart dynamism to the Islamic world. He was, so to say, burning with a desire to effectively challenge the supremacy of Western colonial powers. In this connection he visited various Islamic countries including Egypt. Muhammad Abduh came in contact with him during his visit to that country. He was greatly influenced by Afghani's teachings.

Before 'Abduh came in contact with Al-Afghani, he was greatly influenced by a Sufi teacher, Shaykh Khadr. This influence also proved to be a turning point in his life. He paid tribute to this spiritual mentor of his in his autobiography thus:

Not many days had passed when, behold! you saw my spirit soaring into a world other than a world which I had known. The path which had previously seemed to me straightened, now opened wide before me. The life of this world which appeared great to me, now seemed insignificant, and acquirement of knowledge (*al-m'arifa*) and the yearning of the soul for God which seemed but little in my eyes now became momentous to me. All my anxieties were dispelled and there remained but one ambition: to acquire perfection in knowledge, and in the discipline of the soul. Moreover, I found no spiritual leader to guide me towards the object my soul aspired except the Shaykh who, in a few days, brought me out from the bounds of blind acceptance of traditions into the liberty of mystic union with God... He was key to my happiness, if I have had any in my life... (emphasis supplied).

But Al-Afghani's influence proved to be much more lasting and effective for Muhammad 'Abduh. While the Shaykh Khadr changed his religious outlook, Al-Afghani changed his social and political outlook. 'Abduh joined the Nationalist Party and actively participated in the 'Urabi Pasha rebellion. He was exiled to Syria in 1882 by the British from where he left for Paris in 1884 to join Al-Afghani. There he founded, along with Al-Afghani, a secret society called *Jami'at al-'Urwah al-Wuthqa* (The Society of the Unbreakable Bond). The society also began to publish a paper bearing the name of the society. This paper which began publishing in March 1884, appealed for unity of the Islamic people against the encroachment of the West. Muhammad 'Abduh, however, had to return to Beirut after the failure of Afghani's movement and suppression of *al-'Urwah al-Wuthqa*. He subsequently returned to Egypt on the recommendation of Lord Cromer. He entered into Egypt again at the end of 1888 and he was appointed judge in a native court though his desire was to teach in the *Dar al-'Ulum*.

Due to incessant efforts of 'Abduh an administrative council for Al-Azhar was set up of which he remained an influential member for ten years. He brought important reforms in the institution through this council. On 3 June 1899, he became Grand Mufti of Egypt, a post which he held until his death in 1905. This was an important post since as the chief juriconsult he was an official interpreter of the *shari'ah*.

C Adams in his *Islam and Modernism in Egypt* tells us:

Many *fatwas* which he delivered during his term of office on questions arising out of daily contact of the Muslims of Egypt with the peoples of other religions and other nations, and with the conditions of modern civilisation, and in particular, questions arising from the circumstances that the Egyptians had in the course of events become amenable to laws other than the Canon Law of Islam, were characterised by a spirit of liberty and freedom from bondage to tradition and a desire to render the religion of Islam entirely adaptable to the requirements of modern civilisation.

'Abduh understood both the true spirit of Islam as well as the requirements of modern civilisation, the former due to his profound Islamic learning and the latter due to his active contact with the West. After all he lived for a few years in Paris where he had opportunities to intimately understand the essentials of modern civilisation.

'Abduh, on account of his modern vision, did not approve of the narrow and orthodox outlook of the Al-Azhar 'Ulama who did not accept any change. Not only that, they considered any talk of change as an act of heresy. 'Abduh was also aware of the suppression of women's rights in society. The Egyptian society was basically an agricultural society and he himself came from a small village. The peasantry usually had a very conservative outlook, specially towards women. It becomes evident from creative literary works also that women enjoyed a very low status in Egyptian rural areas. Dr Haykal's novel *Zaynab* portrays the condition of women in that society. We note from this novel that the Egyptian society of early twentieth century was extremely conservative. Dr Haykal wrote this novel in 1914. The social atmosphere was such that initially he did not even give his own name on the novel. He wrote it under the name of Al-Fallah al-Misri. In this novel he portrays the woes and sufferings of women. She was given the lowest of the low status. She was totally helpless in society. Zaynab, the heroine of the novel, resents all this but cannot do anything. Even Hamid, a young man, finds himself totally helpless in the face of oppressive social customs.

I have mentioned about Dr Haykal's novel in order to show the social conditions in Egypt even after the death of Muhammad

'Abduh. He was committed to improve the status of women in his society. He advocated equality of man and woman. He quoted verse 194 of chapter 3 of the holy Qur'an to show that man and woman enjoy equal status. The verse reads: "So their Lord accepted their prayer, (saying): I will not suffer the work of any worker among you to be lost whether male or female, the one of you being from the other." From this passage 'Abduh argued that escape from punishment and reward consists only in performing the work in a proper manner and with sincerity. It shows, he argued, that men and women are equal before God in the matter of reward, when they are equal in their work. He also said:

Anyone who knows all nations before Islam gave preference to man, making women merely his chattel and ■ plaything, how some religions gave precedence to the ■ simply because he is ■ man and she a woman, and how ■ people consider the woman as incapable of religious responsibilities and as possessing no immortal soul, anyone who knows all this, can appreciate its true value and Islamic reform in the belief of the nations and their treatment of women. Moreover it will be clear ■ him that the claims of Europeans to have been the first to honour the woman and grant her equality is false. Islam was ahead of them in this matter. Moreover, even now European laws and religious traditions continue to place man above woman. To be sure, the Muslims have been at fault in the education and training of women and acquainting them with their rights; and we acknowledge that we have failed to follow the guidance of ■ religion.

Muhammad 'Abduh, though brought up in a polygamous family, was against polygamy. He strongly disapproved of it. He was alarmed by the growing trend to take more than one wife. A second marriage, he felt, was dictated by self-indulgence rather than by any genuine necessity. 'Abduh was of the opinion that Islam had permitted polygamy only as ■ concession to the prevailing social conditions but men were now grossly misusing it. He also said that polygamy was a source of discord, strife, and litigation resulting in the ruination of many families. Thus, aware of the evil consequences of the institution of polygamy to the individuals, families and subsequently to the nations, he unequivocally condemns it.

'Abduh was also of the opinion that in view of the baneful effects of polygamy, the 'Ulama should take steps to amend the

canon law of Islam. It would be very much in keeping with the ends of justice. 'Abduh also declared that the present regulations of Islam regarding polygamy did not belong to the essentials of Islam, but were subject to modification according to needs and circumstances.

It was, needless to say, quite a radical position. Today it seems we have regressed rather than progressed. The positions that the 19th century reformers took is difficult for liberals to take today. To the contrary, in view of the rise of fundamentalist and extremist movements, demands are being made to implement the *shari'ah* as it was evolved in the first few centuries of Islam. Muhammad 'Abduh, on the other hand, wanted to take changed circumstances into account for reformulating certain *shari'ah* positions. Even Imam Taymiyyah, the great Islamic thinker, maintained that the *shar'i* injunctions should change with the changing times. However, this edict of the great Imam was never followed in practice. The Muslims continued to follow blindly what was formulated centuries ago in the then prevailing circumstances.

It is interesting to note that another great Egyptian thinker and writer, Ahmad Amin, also argued in his book *Fajr al-Islam* that the *shar'i* formulations must change with the times. Ahmad Amin goes on to give the example of 'Umar, the second Caliph after the holy Prophet (PUBH), who in view of the changed circumstances, effected many changes even in those practices which were well established from the Qur'an and the *sunna*. For, example, 'Umar suspended the punishment for theft (of cutting off hands) during famine, he stopped giving a portion of *zakat* to *mu'allafah al-qulub*, ie, those whose hearts are to be won), though it is clearly provided for in the Qur'an and the Prophet also practised it. Quoting these examples Ahmad Amin argues that if within a few years after the death of the Prophet 'Umar had to make so many changes, what about our own times? Will changes not be necessary now?

Muhammad 'Abduh was well aware of the need for such changes and hence he pleaded with the 'ulama to effect the necessary changes to improve the status of women. He, not only pleaded for abolition of polygamy, he also took a liberal view in respect of other matters in need of change. He viewed all this rationally and argued on the basis of causes for which certain measures were permitted or prohibited and whether those reasons were operative any more. One such question was of *taswir*



(ie, photography). The classical Islam had prohibited drawing of images or installation of statues. Could then photography be permitted? The 'ulama generally maintained it could not be. However, 'Abduh saw no harm in permitting it. Today it might seem an insignificant matter to us as photography has become so common. But when 'Abduh handled this question, there was intense theological debate about its permissibility. It was then a significant question.

'Abduh strongly maintained that there was nothing wrong in drawing images or painting or making sculptures. These things had nothing to do with the *shari'ah*. They are part of our human heritage. He wrote that these portraits and statues can rightly be called an anthology of societies and mankind because they have preserved the various aspects of life of individuals and societies in different circumstances and environments. They depict the different feelings and emotions of man and beast that words fail to convey their true sense. Sometimes it is very difficult to distinguish the nuances contained in words, identical and co-extensive in ~~words~~ such as happiness and pleasure, fear and anxiety. But if we look at a statue, which is a silent verse, the difference becomes at once clear in our minds and this gives pleasure to our soul.

Thus it will be seen that 'Abduh not only allowed photography, painting and installation of statues, he gave strong justification for that. He not only looked at them from the perspective of theology but also from that of history and humankind's cultural heritage. Any other 'alim might have looked at the problem merely from a theologian's angle. As for banning of drawing of images he explicates reasons thereof. He said that the tradition which declares unlawful the drawing of images owes its relevancy to the period when the cult of paganism was still practised in Arabia, and images were made exclusively for two purposes: first, pleasure (*lahv*) and, secondly, to earn the blessings of pious persons such as those whose images were portrayed. The former is the one which is condemned by Islam and the latter is one of those things which Islam came to efface.

He then goes on to argue that you cannot refute the argument that an image, under all circumstances, is liable to be worshipped; for in reply it can be said that your tongue also is liable to tell lies.

But does it follow from this that the tongue should be tied up even though it may tell the truth as well as falsehood?

'Abduh thus advanced very apt as well ■ cogent arguments to justify the permissibility of images, paintings and statues. This is the characteristic of 'Abduh that he goes right into the basic cause of something's permissibility or otherwise. 'Abduh does not merely quote authorities and draw his conclusion. If at all he has to fall back on any authority he quotes the Qur'an and some very authentic *hadith*, and interprets these source materials by using his own reason. Thus he relies more on reason than on conventional authorities as other 'ulama do. That is why he draws his own conclusions. Also he gives more importance to contemporary situation and sees things in their context. It is obvious from his famous Transvaal *fatwa*.

'Muhammad 'Abduh was asked whether it was permissible for a Muslim to eat the meat of animals slaughtered by the Christians of Transvaal according to their own manner which differs from the manner prescribed for Muslims. 'Abduh's answer excited much controversy in the Egyptian press. The controversy assumed such serious proportions that Khedive 'Abbas II made a virulent attack on him. The most delicate question involved in 'Abduh's *fatwa* was the Qur'anic injunction that Muslims were prohibited to eat meat over which the name of God was not invoked at the time of slaughtering. Thus 'Abduh was charged with allowing the food specifically prohibited by the *shari'ah*.

'Abduh, without taking recourse to generally quoted *hadith*, quoted from the Qur'an to justify his *fatwa*. He quoted verse 5:7 of the Qur'an, ie "And the food of those who have been given the Book (*ahl al-kitab*) is lawful for them." Apart from the authority of the Qur'an invoked by 'Abduh, he also thought that the Muslims of Transvaal could not live in isolation and that the Muslim ■ should have better social intercourse with the Christians. This *fatwa*, among other things, also shows 'Abduh's liberal and tolerant attitude towards other religious groups. This is all the more necessary in today's pluralist society. Fundamentalist and extremist attitudes will only create conflict and bloodshed.

As pointed out above, 'Abduh did not accept the 'ulama and the jurists of earlier period as the final authority. In fact, he went on to say that "in Islam there is no such thing as religious authority. The Caliphs or the *Qadis* or the *muftis* or the *shaykh al-*

Islam are the civil authority, though it is the Islamic Law that defines their powers and duties" (See *al-Islam wa'l Radd 'ala Muntaqidih*, Cairo, 1900, pp 64-65). It is indeed a very radical position. Had Muslims followed 'Abduh in this respect, much of the social troubles in Islamic countries could have been avoided. Mechanical interpretation and blind imitation of authorities lead us into a closed alley.

Muhammad 'Abduh had great faith in the Qur'an. An important postulate of his commentary is his view that the Qur'an is in complete harmony with the modern civilisation as its teachings are quite universal. According to him God has sent two Books: one created which is nature and the other revealed, which is the Qur'an (See Rashid Rida's *al-Manar* vol VII, p 292). This position is very close to that of the nineteenth century Indian thinker, Sir Syed, who also maintained that while the Qur'an is the word of God, nature is the work of God. It is also interesting to note that in matters of eating Christian food also, the two nineteenth century thinkers hold similar views. Sir Syed in his treatise *Ahkam-i-Ta'amm ahl-Kitab* published in 1868 quotes the Qur'anic verse (5:7) and says that Islam explicitly permits 'the food of the people of the Book'. In regard to the laws of nature also, 'Abduh took a very liberal position. The Qur'an, he said, deals with nature in a general way and has left all the details to us that we may investigate the possibilities of Nature and discover the laws which govern it (See *Tafsir*, p 23).

Thus it will be seen that 'Abduh accepted the modern science and its laws and does not find them contradictory to the Qur'anic teachings. He did not find even Darwin's theory contradicting the Qur'an. He maintained, "The origin of human race ■ stated in the Qur'an is capable of harmonisation with Darwinian views. 'One soul' does not refer to Adam ■ is neither intended expressly by the text nor by its literal meaning. For, in that case, it would have been more fitting to refer to the descendants as: 'all men and women'. Instead of referring in ■ general and indefinite way as 'many men and women' (*Tafsir* IV, p 322).

'Abduh also goes on to interpret verse 30 chapter 2 ("Behold! Your Lord said to the angels, I am going to place on the earth a successor, *Khalifah*") implying that man is successor to animals. Of course, today many postulates of Darwin might be questioned. But this is not the point. What is important is that 'Abduh saw the

Qur'an with a liberal's eye and he found it in keeping with the scientific spirit. He did not take it as a literalist.

He does not take, like the classical commentators, *jinn* as supernatural beings, but ones hidden from eyes (which is the meaning of the word *jinn*). He thinks it can refer to what modern science calls microbes. Similarly, he interprets *surah* 105 which refers to '*tayran ababil*' (the swarms of flying things) very differently from the classical commentators. 'Abduh says this *surah* proves Pasteur's theory of bacteria. In his *Tafsir juz' 'Amma* (pp 157-58) he says that the swarms of flying things who showered pebbles over the Abyssinian army meant germs or bacteria which caused the epidemic and it was the first time that smallpox was introduced in Arabia.

He was also of the opinion that the description of heaven and hell should not be taken in the literal sense: they are metaphorical expressions meant to describe the greatest intensity of pleasure and sorrow (ibid, p 72, 163); it will be interesting to note that another twentieth century Indian thinker and poet, Mohammad Iqbal, held similar views about heaven and hell. He said, they are states of mind. Iqbal was closer to 'Abduh's thinking in many respects though he was not a theologian but a poet. Iqbal says, "The only course open to us is to approach modern knowledge with a respectful but independent attitude and to appreciate the teachings of Islam in the light of that knowledge, even though we may be led to differ from those who have gone before us" (Iqbal, *Reconstruction of Religious Thought in Islam*, Lahore, 1960, p 97). On this aspect Iqbal also says, "Thus ■ false reverence for past history and its artificial resurrection constitute no remedy for ■ people's decay" (ibid, p 151). 'Abduh was also against false reverence for past history and he struck his own path in the Qur'anic *tafsir* as well ■ Islamic jurisprudence. Like 'Abduh, Iqbal also maintained that Islam was a civil society. He says in his lecture on "The Principle of Movement in the Structure of Islam", "for Islam was from the very beginning a civil society, having received from the Qur'an a set of simple legal principles which, like the twelve tables of the Romans, carried, ■ experience subsequently proved, great potentialities of expansion and development by interpretation" (ibid, pp 155-56).

All great thinkers of nineteenth and twentieth centuries have argued that reinterpretation of scriptures is necessary. The

language of scriptures, including that of the Qur'an, tends to be symbolic and allegorical and hence has great potentialities for being understood in different ways in different circumstances. The potential meanings can unfold only in appropriate circumstances. That is why what the classical commentators understood was in keeping with their own circumstances. It cannot be binding for the subsequent generations. However, the orthodox 'ulama maintain that what was understood by the earlier commentators is binding — all as they were closer to the Prophet and his companions. It should be borne in mind that even what the Prophet said was related to his own time and people. It could not be torn from its context. 'Abduh's understanding of the Qur'an clearly bears this out.

Ahmad Amin, another thinker from modern Egypt, is aware of the contextual significance of the Qur'an and *hadith*. He argues elaborately, in his book *Fajr al-Islam*, about the contextual significance of both. Ahmad Amin quotes a *hadith* from Abu Sa'id al-Khadari that the Prophet said — do not write anything from me save the Qur'anic text and anyone who writes other than the Qur'an from me should be wiped out. Thus the *hadith* literature began to be compiled only after the death of the Prophet, even much later. The reason why the Prophet dissuaded from writing what he said (other than the Qur'an) was that it should not become binding on the people. He was well aware of the fact that things will have to change with time and circumstances. But even then people compiled volumes of *hadith* and made them binding on the Muslims without regard to their circumstances. Ahmad Amin, like Muhammad 'Abduh, was of the opinion that the *ahkam* of the *shari'ah* must change with time.

Ahmad Amin also draws our attention to the fact that Abu Hanifa accepted very few *hadith* as genuine, and quoting the noted historian of Islam Ibn Khaladun he says he (ie, Imam Abu Hanifa) accepted only 17 *hadith* as authentic. And yet his books are full of various *hadith* and his *fiqh* also is based on these *hadith*. Thus most of the provisions of the *shari'ah* become contextual. Yet there are very few people who would agree that the normative be separated from what is contextual in reinterpreting the provisions of the *shari'ah*.

All this should not in any way that religion does not play an important role in our lives. In fact, it does play an

important role. However, it is spiritual aspects which should have the central role. Ahmad Amin too, asserted the need for religious faith as a complement to scientific and rational faith. He even seemed to experiment during the war years with a kind of intellectual sufism. But this never meant the basic change in his convictions. He continued to emphasise the importance of reason in its own sphere. Similarly in his works like *Zuhr al-Islam*, he does not compromise his role as a historian.

Ahmad Amin also maintains that (1) religion is a part of human nature and thus necessary for human happiness and equilibrium, (2) religion is a source of power for action, particularly moral action; and (3) religious and scientific knowledge have different sources and different but complementary functions. Thus it will be seen that despite his liberal views Ahmad Amin never tires of emphasising the role religion plays in human life.

Muhammad 'Abduh too sticks to the basic teachings of Islam. Prof Mahmudul Haq points out in his book *Muhammad 'Abduh — A Study of Modern Thinker of Egypt*, "In spite of his attempts to defend the Qur'an by interpreting its verses in symbolic or allegorical terms, wherever he finds the opportunity to do so, he nevertheless tried his best to adhere to the orthodox lines. Especially in matters of supernatural beliefs 'Abduh always adopted a very cautious attitude."

## RABI'A BASRI: A MYSTIC WOMAN PAR EXCELLENCE

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*Tasawwuf* (mysticism) has been a very important stream of Islamic thought and vision. It represents the inward and esoteric side of Islam. It lays much greater stress on spiritual dimension than rituals and is quite comparable to the Bhakti Marg of Hindu religion. Self-abnegation, ecstatic devotion and spiritual practices are the hallmarks of sufis. Their ultimate aim is *fana fi'llah* (annihilation in God), a concept very similar to that of the Bhakti movement. Islam produced some of the greatest mystics in the world who had a profound influence on Muslims as well as non-Muslims. The sufis did not believe in artificial barriers among human beings.

Muhyiddin Ibn Arabi, one of the greatest Sufi saints was the founder of the doctrine of *wahdat al-wujud* (ie, Oneness of Being). This doctrine had far-reaching implications. It considered all human beings, along with other creations, as manifestations of God and hence he did not believe in man-made barriers. He used to say: "My heart is a mosque, a church, a synagogue and a temple," and he used to say that his religion is love. Thus it will be seen that it is love of God which was most central to the Sufis. The Sufis showed compassion to all creatures equally. Sufyan Thauri, a great Sufi saint (AD 715-778), showed compassion equally to animals and human beings. Rather than eating bread himself he would give it to a dog, explaining: 'If I give bread to the dog.... he keeps watch over me all through the night so that I can pray, if I give it to my wife and child, they hold me back from my devotions.'

Rabi'a al-Adawiyya, popularly known as Rabi'a Basri, was a sufi woman par excellence. She is universally respected in the Muslim society. In fact, in the history of Islam women saints



appeared at a very early period and dignity of saintship was conferred on woman as much as on man. Not that there were no difficulties in their way of being accepted as saints. There were. But their eminence as Sufis was so overwhelming that the men had to concede high status to them. Also, ■ far as 'friends of God' (*awliya' Allah*) were concerned there was complete equality between the two sexes. Fariduddin Attar found an ingenious explanation. He says,

The holy prophets have laid it down that 'God does not look upon your outward forms.' It is not the outward form that matters, but the inner purpose of the heart, as the Prophet said, 'The people are assembled (on the Day of Judgment) according to the purposes of their hearts'...So also 'Abbas of Tus said that when on the Day of Resurrection the summon goes forth, 'O men', the first person to set foot ■ that class of ■■ (ie, those who are to enter paradise) will be Mary, upon whom be peace. The true explanation of this fact (that women count for as much as men among the saints is that wherever these people, the Sufis are, they have no separate existence in the Unity of God. In the Unity, what remains of the existence of 'I' or 'thou'. So how can 'man' or 'woman' continue to be?

"The high position", says Margaret Smith, in her book on Rabi'a, "attained by the women Sufis is attested further by the fact that the Sufis themselves give to a woman the first place among the earliest Muhammadan mystics and have chosen her to represent the first development of mysticism in Islam. In fact, Lady Fatima, the daughter of the Holy Prophet, enjoys a very high position and is referred to as the first *Qutb* or spiritual head of the Sufi fellowship."

Attar, the biographer of Rabi'a speaks of her as:

That one set apart in the seclusion of holiness, that woman veiled with the veil of religious sincerity, that one on fire with love and longing, that one enamoured of the desire to approach her Lord and be consumed in His glory, that woman who lost herself in union with the Divine, that one accepted by men as ■ second spotless Mary — Rabi'a al-'Adawiyya, may God have mercy upon her.

Saiyid Athar Abbas Rizvi writes in his book *A History of Sufism in India*, Rabi'a attained an exalted spiritual status through prayer and continual fasting. She remained celibate throughout her life. Many hagiographies say that Sufis, Hasan Basri, Malik Dinar, Sufyan Thauri and Shaiq Balkhi, visited her frequently in her

lonely hermitage and also at times when she withdrew to the wilderness ... A broken pitcher, out of which she drank and made ritual ablutions, an old reed mat, and a brick which she occasionally used as a pillow, were her only belongings.

Margaret Smith also says, "Rabi'a's teachings on mysticism and her contribution to the development of Sufism are of considerable importance, and in dealing with her teaching we stand on surer ground ... As a teacher and guide along the mystic way, Rabi'a was greatly revered by the Sufis and practically all the great Sufi writers speak of her teaching, and quote her sayings, as being of the highest authority. Abu Talib al-Makki, one of the first to write a systematic treatise on Sufi doctrine; al-Qushayri, in his *Risala* on the subject; the great Muslim theologian al-Ghazali, of whose works frequent editions have been brought out during the past century and whose teaching is widely accepted by Muslims up to the present day; and al-Suhrawardy, also a well-known writer on Sufism, all refer to Rabi'a's teaching on the main doctrines of Sufism. These writers were chiefly concerned with expositions, doctrinal and theological, but Rabi'a's biographers also make it plain that teaching to others what she herself had learned of the way, played an important part in her life."

Another important thing in this respect is that *tasawwur-e-shaikh*, ie, the concept of a master who initiates and leads a disciple to perfection as a Sufi is of utmost importance. No great Sufi that we know of attained such perfection without a sheikh. The only exception seems to be Rabi'a. Thus Margaret Smith also points out, "It is to be noted that we do not hear of Rabi'a herself learning from any great Shaykh or teacher. It is a matter of great distinction for a woman Sufi saint that she achieved such excellence as a Sufi without any master to guide her. Thus it goes to the credit of a woman. It is often held against women that she could not achieve the status of a prophet though of course we argue that we do not know the names of all the prophets as the Qur'an gives only a few names. There have been, according to Islamic belief, one hundred and twenty-four thousand prophets. Who knows, there might have been some women prophets. Anyway, in Jewish tradition some women prophets are mentioned. It may or may not be true but it is an established fact that Rabi'a Basri established her great reputation as a Sufi saint without any help from any male teacher or shaykh. This itself is a matter of great pride for women."

One of the important aspects of Rabi'a's teachings is love. She understood the real import of love. Love can be anything but selfish. She never approved of selfish love of God. Such love is of no consequence. Love cannot and should not have motives. Rabi'a expressed selfish and disinterested love of God as under:

In two ways have I loved Thee: selfishly,  
And with a love that worthy is of thee.  
In a selfish love my joy in Thee I find,  
While to all else, and others, I am blind.  
But in that love which seeks Thee worthily,  
The veil is raised that I may look on Thee.  
Yet is the praise in that or this not mine,  
In this and that the praise is wholly Thine.

She often used to pray: O my Lord, if I worship Thee from fear of Hell, burn me in Hell, and if I worship Thee from hope of Paradise, exclude me thence, but if I worship Thee for Thy own sake then withhold not from me Thine Eternal Beauty.

There are some stories about her which show her intense love of God. She was so absorbed in His love that she never thought of anything else. One day a number of saints saw that Rabi'a had taken fire in one hand and water in the other and was running with speed. They asked her, where are you going and what is the meaning of this? She said, I am going to light fire in Paradise and to pour water on to Hell so that both veils (ie, hindrances to the true vision of God) may completely disappear from the pilgrims and their purpose may be sure, and the servants of God may see Him, without any object of hope or motive of fear. What if the hope of Paradise and the fear of Hell did not exist? Not one would worship his Lord or obey Him.

Attar also mentions among her sayings on this great subject of the all-absorbing love to God, that one day Rabi'a was asked, "Do you love the Lord of Glory?" Perhaps her questioner thought it was impossible or presumptuous for her to love One so far above her. But she said, "I do". Then she was asked, "Do you hold Satan an enemy?" She replied, "No" and the other, astonished, asked, "How is that?" Rabi'a said, "My love for God leaves no room for hating Satan."

Once when asked by the noted Sufi Saint Sufyan al-Thauri what was the basis of her faith, her reply revealed the secret of her life. She said, "I have not served God from fear of Hell, for I should

be like ■ wretched hireling, if I did it from fear; nor for love of Paradise, for I should be a bad servant if I served for the sake of what was given, but I have served Him only for the love of Him and desire for Him."

Al-Ghazali, himself an accomplished Sufi and ■ theologian of great repute explaining Rabi'a's love for God, says:

She meant by the selfish love, the love of God for His favour and grace bestowed and for temporary happiness, and by the love worthy of Him the love of His Beauty which was revealed to her, and this is higher of the two loves and the finer of them....

Margaret Smith says about her philosophy of love, "To sum up Rabi'a's teaching on love, that is the love of the servant to his Lord: she teaches, first, that this love must shut out all others than the Beloved, that is, the saint must turn his back on the world and all its attractions, he must cut himself off from the creatures of God, lest they should distract him from the Creator, he must even rise above the claims of the senses and allow neither pleasure nor pain to disturb his contemplation of the Divine."

Such was the Rabi'a's teaching of love for God. Her concept of paradise was also radically different from others. For her it was not a place but a state of contemplation of the Face of God. When asked what she had to say about paradise, she said, "First the Neighbour, then the house." Explaining this al-Ghazali says that she meant that in her heart was no leaning towards Paradise, but to the Lord of Paradise. He then expounds in detail the meaning of Paradise as understood by Rabi'a. He says:

No one who does not know God in this world will ■ Him in the next, and he who does not find the joy of gnosis in this world will not find the joy of vision in the next, since none may appeal (to God) in the next world who has not sought His friendship in this world and none may reap who has not sown. A man is raised up only in the state in which he has died, and he dies only in a state in which he has lived and the only gnosis he takes with him is that wherewith he was blessed in himself, unless it is changed into the Vision (of God) by the removal of veil, when his joy in it is greatly increased just ■ the joy of the lover is doubled if the imaginary picture of the loved is exchanged for the vision (ie, the reality) of the picture, that is, the highest joy.

For the delights of Paradise ■ to each one there, only what he desires, and to him who desires only to meet with God Himself

there is no delight save in Him, indeed he may suffer thereby, for since the delights of Paradise are only in proportion to (his) love of God and his love of God is in proportion to his gnosis, then the origin of (that spiritual) happiness is the gnosis which has been revealed by God through faith, and if you say, 'Then the joy of Vision, if it is in proportion to the joy of gnosis, in this world is but weak', verily it shall be increased to an almost infinite degree of power, so that all the other joys of Paradise shall be despised beside it.

It is true that among the Sufis Paradise has generally meant love of God. For example, Ibrahim b. Adham of Balkh, and Rabi'a's contemporary, also says, "O God, Thou knowest that in my eyes Paradise hath not the value of a gnat, if Thou hast blessed me with Thy love." Also, Abu Yazid al-Bistami, who lived a little later than Rabi'a, said, "Paradise is of no worth to those who love." But Rabi'a is a degree above these Sufis in maintaining that life eternal is pure contemplation and adoration of the Beloved.

Rabi'a was so absorbed in the thought and service of her Lord that she thought anything else as distraction from her contemplation of God. She ~~was~~ feared her reputation as a saint as a distraction and also something which might give her satisfaction in something other than her Lord's service. Thus the only satisfaction she was delighted with was her absorption in the contemplation of God. Any other satisfaction was not acceptable to her. Thus we also find in her sayings that 'What appears of my (good) works, I count as nothing at all.' She also used to counsel others those who asked her, 'Conceal your good deeds as you conceal your evil deeds'. She was wary of receiving anything from mankind, even commendation.

Fariduddin Attar, her biographer, narrates how she detested worldly possessions, even its thought. When some visitors came to her and sat by her pillow (as she was ill) and, in order to please her, reviled the things of this world, she, perceiving their insincerity, rebuked them and said, 'You must be very fond of this world: if you were not fond of it, you would not say so much about it. Who breaks the goods must have bought them. If you were detached from this world you would not speak of it, either good or ill — remember that 'who so loves a thing speaks much of it'." This clearly shows that she was so absorbed in her Vision of the Lord that she never thought of this world at all. This is true renunciation, even the thought of it.

Many miracles are also ascribed to Rabi'a which may or may not be true but one thing is unmistakable — that these miracles clearly prove the superiority of female saint over male saints. Thus says Margaret Smith – “An amusing legend is told of how Hasan of Basra tried to exploit Rabi'a's power of working miracles for his own glory but only succeeded in reaping a rebuke for his vanity.”

“One day he saw Rabi'a,” says Margaret, “near the river-side. Hasan cast his prayermat onto the surface of the water and said, ‘O Rabi'a, come and let us pray two *raka's* together’, evidently counting on her powers to keep the carpet from sinking. Rabi'a said, ‘O Hasan, was it necessary to offer yourself in the bazar of this world to the people of the next? (That is, was it needful to seek to win worldly reputation by a spiritual gift?) This is necessary for people of your kind, because of your weakness.’ Then Rabi'a threw her prayermat into the air and flew up onto it and said, ‘O Hasan, come up here that people may see us.’ But that station was not for Hasan and he was silent. Rabi'a, wishing to comfort him, said, ‘O Hasan, that which you did, a fish can do just the same, and that which I did, a fly can do. The real work (for the saints of God) lies beyond both of these and it is necessary to occupy ourselves with the real work.’” (See Margaret Smith, *Rabi'a -- The Life and Work of Rabi'a and Other Women Mystics in Islam*, One World, Oxford, 1994, pp 56-7).

Similarly Fariduddin Attar tells us how one day Rabi'a had gone to the mountains and there a band of wild creatures gathered round her, deer and gazelle and mountain goats and wild asses, who came and looked at her and drew close to her. Suddenly Hasan al-Basri appeared, and when he saw Rabi'a he approached her, and those wild creatures, when they saw Hasan, all fled away forthwith and Rabi'a was left alone. Hasan was vexed when he saw that, he looked at Rabi'a and said, “Why did they flee in terror from me, while they were friendly with you?” Rabi'a said, “What have you eaten today?” He said, “Some onions (fried) in fat.” She said, “You eat of their fat, how should they not flee from you?” (See Margaret Smith, *op cit*, p 56).

As pointed out before, these stories may or may not be true but they clearly point out the superiority Rabi'a enjoyed in the eyes of common people. Hasan of Basra was himself a highly revered Sufi saint who also enjoyed a very high reputation among

the people of his time. And yet we see the stories which prove Rabi'a's superiority over Hasan Basri. We can thus understand the status of Rabi'a as a Sufi saint. There is no doubt that Rabi'a, despite all the prejudices against women, made the highest grade and won superiority over men. This itself speaks volumes of her excellence in spiritual matters. She was not only a woman but also of lowly origin, yet she made her mark.

We have other women saints as well from the earliest time of the Islamic calendar, like Umm Haram and Rabi'a of Syria (who preceded Rabi'a Basri). We also hear of Mu'adha al-'Adawiyya who was ■ contemporary of Rabi'a Basri. We can enlist many more. All these Sufi women, though may not be of the same stature as Rabi'a Basri, enjoyed a high reputation as Sufi saints in their society. In this respect, it seems, they were not discriminated against. The only criterion to judge the excellence of a Sufi saint was his/her spiritual excellence and not his/her gender. In this arena both the genders enjoyed equality. The spiritual merit was the only true merit. It was in this ■■■■ that ■ woman like Rabi'a Basri could excel over all her male counterparts.



## MAULANA 'UMAR AHMAD 'USMANI AND WOMEN'S RIGHTS

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There have been many eminent Muslim men like Maulana Mumtaz Ali Khan, Maulvi Chiragh Ali and others who have been inveterate advocates of women's rights in Islam. Maulana 'Umar Ahmad 'Usmani of Karachi, Pakistan, is one among them. He is a traditional Islamic scholar trained at Mazahir al-'Ulum, Saharanpur, India. But his views are amazingly and pleasantly liberal and progressive in matters of Islamic jurisprudence in general, and women's rights in particular. His scholarship in Islamic jurisprudence is beyond any ken of doubt. No one, however great an Islamic jurist one may be, can question his scholarship, though one may disagree with him on questions of interpretation. But then, throughout Islamic history, no two jurists have agreed with each other. Imam Hanbal, Imam Abu Hanifa, Imam Shafi'i, Imam Malik, Shi'i and Isma'ili jurists all have disagreed with each other, and have disagreed on many important, even fundamental matters. If Imam Taymiyyah thinks triple divorce in one sitting is not permissible, other great jurists allow it. If the Shi'i jurists allow *muta'* marriage (ie, temporary marriage stipulating the time period) the Sunni and Isma'ili Muslims disallow it. These differences have been described in various books of Islamic jurisprudence. Tabari, a great commentator on the holy Qur'an and an equally eminent jurist, has described these differences in his book *Ikhtilaf Usul al-Fiqh*. Thus, every eminent jurist has interpreted various Qur'anic verses and the Prophet's *hadith* (traditions) according to his own views and biases.

Maulana 'Umar Ahmad 'Usmani is also a highly learned jurist in his own right and he has his own views on various issues,

particularly those pertaining to women, be it marriage, divorce, inheritance or custody of children. In certain respects his views on the treatment of women differs radically from other traditional jurists. Also he bases his views entirely on the Qur'an and *hadith*, nothing else and comes to entirely different conclusions from many other noted traditional jurists. The Maulana has written his magnum opus *Fiqh al-Qur'an* in eight volumes. The book which is written in Urdu is a veritable treasure of Islamic jurisprudence though it is written in traditional style and full of repetitions. This essay is primarily based on this book of the Maulana.

Here we will take up some aspects of women's position in Islamic jurisprudence which the Maulana has dealt with. Maulana Ahmad, as pointed out above, has very liberal views as far as polygamy is concerned. While discussing the question of polygamy (*ta'adud-e-izdiwaj*) the Maulana goes to the very root of the word used in this regard. For either spouse the word used in Arabic is *zawj* which means both husband or wife. Thus he points out that the very word *zawj* implies one husband and one wife. For marrying the word in Arabic is *zawwaja* or *tazawwaja* (I married) and this means he married one woman (or *zawwajat*, ie, she married a man). He points out that *zawwaja* cannot mean that on one side there would be one man and on the other four or five women.

Then he goes on to argue against polygamy by referring to the Qur'anic verse (4:1), "O people, keep your duty to your Lord, who created you from a single soul and created its (*zawjaha*) of the same (kind), and spread from these two many men and women ..." The Maulana then goes on to argue that in this Qur'anic verse Allah has created a couple (*zawj*, ie, man and woman) and then created men and women from this couple. Thus in the beginning there was one male and one female and not many females for one male, though at that time there was greater need for this to increase the human population rapidly (it is not correct to say that polygamy leads to rapid increase in human population). He also points out that this verse usually is recited while solemnising the marriage (*khutba-e-nikah*) but our 'ulama do not reflect deeply the implications of this verse. Obviously this verse clearly implies one female for one male and not many females for one male.

Then Maulana 'Usmani refers to yet another verse of the Qur'an (2:35) which says, 'And we said: O Adam, dwell thou and thy wife in the garden, and eat from it ■ plenteous (food) wherever you wish, and approach not this tree, lest you be of the unjust.' Then 'Usmani argues that Adam was the first person sent on earth and Allah had created only one wife for him and not several wives. Wherever Adam's story has been referred to in the Holy Book, it refers to Adam and Hawwa'(Eve). For example, in verse 20:117 it is said, 'We said: O Adam, this is an enemy to thee and thy wife; so let him not drive you both out of the garden so that thou art unhappy.' This verse also clearly refers to only one wife of Adam. 'Usmani further refers to the verses 75:3:39, 'Does man think that he will be left aimless? Was he not a small life germ in sperm emitted? Then he was a clot; so He created (him), then made (him) perfect. Then He made of him two kinds, the male and the female.' This ■■■ also refers to ■■■ and women being made into *zawjain*, ie, couples which clearly means ■■■ woman for one man. Thus God creates couples right from day one. Allah does not create ten women for one man. It is man, the Maulana argues, who changes this equation.

But if it happens (ie, more women for one man) it is due to some social crisis, Maulana 'Usmani says. And the holy Qur'an, he argues, has shown us the solution. But during the normal period Allah creates only one woman for one man and he will have to remain content with one woman only. But if someone marries a woman and he comes to dislike her, the Qur'an does not suggest that you then marry another one as four wives have been permitted. On the other hand the Qur'an says:

O you who believe, it is not lawful for you to take women as heritage against (their) will. Nor should you straighten them by making them part of what you have given them, unless they are guilty of manifest indecency. And treat them kindly. Then if you hate them, it may be that you dislike ■ thing while Allah has placed abundant good in it.

And if you wish to have (one) wife in the place of another and you have given one of them a heap of gold, take nothing from it. Would you take it by slandering (her) and (doing her) manifest wrong?

And how can you take it when you have gone in unto each other, and they have taken from you a solemn covenant?

The Maulana then makes the following comment on these above Qur'anic verses: The Qur'an requires that if you dislike your wife you better reconcile yourself to it because you may dislike something and Allah may have hidden something better for you in that. So it is better that you change your dislike into love. This may be good for you. No one is virtue personified nor anyone is evil personified. The wife you dislike may have certain virtues. But if you cannot overcome your dislike and you decide to divorce and marry another one (here the Qur'an does not suggest taking another wife along with the first but divorcing one and taking another one) you cannot take back from her what you had given her by way of *mehar* or gift, even if it be a heap of gold. Thus the Qur'an puts pressure on the husband to think twice before divorcing one wife to take another in her place. The Qur'an persuades man to stick to the first wife and not to divorce her. Thus the Qur'an does not approve of polygamy even in such circumstances. It permits it only in highly exceptional circumstances ■ only in a crisis situation.

Then the Maulana quotes the verses on polygamy, ie, verses 4:2-3 to show that polygamy has been permitted only in highly exceptional circumstances, ie, when a large number of women have been rendered *yatim* (orphans) due to devastating wars (which was not at all unusual ■ that time in Arabia. The holy Prophet himself had to fight many such wars in which ■ large number of men were killed). The word *yatim* used in the above verse means not only orphans but also widows according to the classical Arabic usage. Even Imam Abu Bakr Jassas agrees to this meaning of the word *yatim*. Thus it is quite natural that in war time a large number of girls and women became orphans or widows and many of them possessed valuable properties. Their wards would either eat away this property or would exchange a bad one of their own with the good one of these orphans and widows. Thus in order to protect the properties of these women and to find shelter for them the Qur'an permitted marrying up to four wives. The Maulana quotes extensively from the Hanafi Imam Abu Bakr Jassas to support his above arguments.

Maulana 'Usmani also argues that the meaning of verse 4:3 is that you should marry these orphans or widows only, not other women. He maintains that the words *min al-nisa'* and not *min*

*nisa'in* clearly indicate that the Qur'an means those very women rendered orphans and widows in wars. Many commentators of the Qur'an maintain that a man can marry any other woman up to four whom he likes and quote a *hadith* to this effect from A'isha, the Prophet's wife. The Maulana quotes rendering of this verse into Urdu by Maulana Azad also and wonders how such an erudite scholar as Maulana Azad could commit such a mistake.

Then Maulana 'Usmani argues that whatever is conditional would remain valid only if the condition is fulfilled. The number of marriages up to four has been permitted only on the condition that there are a large number of orphan girls and widows who are not being taken care of or injustices are taking place with them or no one is there to look after them. Only if these conditions persist, up to four marriages will be permitted to Muslim men. But if such a condition does not prevail in the society, the permission to marry more than one wife will not be valid. According to 'Usmani this injunction in the Qur'an is not general but conditional. He also points out that the verse pertaining to polygamy begins with *wa in khiftum alla tuqsitu fi' al-yatama* (if you fear you cannot do justice to orphans and widows) and hence this is the main condition. Thus it is obvious that one can take more than ■■■ wife only from among orphans and widows with whom one cannot do justice otherwise.

Further the Maulana makes another interesting argument. If the verse on polygamy permits more than one wife only in crisis situations why was it not understood in this perspective in the early Islamic period and why does this practice (of polygamy) continue among the Muslims unabated? The Maulana says that the early Islamic period, until the end of the Abbasid rule, was full of wars. During the holy Prophet's time a number of battles had to be fought. Then during the early period of *Khilafat-e-Rashidah* a number of wars were fought and then began the period of civil war among the Muslims. It was followed by the Umayyad period which was also full of conflict and turmoil. The Umayyads were subsequently overthrown and the Abbasid rule began. The wars continued. Sometimes with Daylams, sometimes with Saljuqs and sometimes with Tartars. Ultimately the Tartars reduced the Abbasids to dust. Thus in these wars a large numbers of Muslim men continued to be killed and ■■■ and more orphan girls and widows came into existence. Thus Muslim men continued to

marry more than one wife and polygamy remained in practice. Because of its persistence for so long it became a strongly entrenched tradition and then followed the period of *taqlid* (blind imitation) and hence it persists in our times as well though *Qur'anically* speaking, it has no validity whatsoever today.

After the discussion on polygamy we would like to take up the question of triple divorce as dealt with Maulana 'Umar Ahmad 'Usmani. He deals with the problem of divorce in the 2nd volume of his *Fiqh al-Qur'an*. He discusses the question of triple divorce under the sub-heading *Talaq-i-Bid'ah*, ie, innovated (or sinful) form of divorce. He defines *Talaq-i-Bid'ah* as a divorce which is pronounced thrice in one sitting when the wife is in the state of purity (*tuhr*), ie, when man says: 'I divorce you, I divorce you, I divorce you'. The Hanafis believe that though this form of divorce is sinful and innovative, it is nevertheless valid and divorce will take place. According to the Hanafis when triple divorce is pronounced, the wife will become totally alienated from the husband and he cannot remarry her. She becomes *haram* (totally prohibited) for him. Neither can he take her back nor can he go for fresh *nikah* with her. He can go for *nikah* with her only after she marries another person and that person divorces her on account of marital conflict or she becomes a widow.

According to Maulana 'Usmani this is the position of not only Abu Hanifa but also of Imam Malik and Shafi'i. Imam Shafi'i says this form of divorce is perfectly valid. It is not innovation (*bid'ah*). It is quite proper on the part of the husband to pronounce such a divorce. No husband can be prevented from adopting a valid course. Even Imam Ahmad Hanbal's position is the same as that of Imam Hanifa and Imam Malik. Thus it 'seems that all major founders of four schools of jurisprudence accept the validity of triple divorce.'

But Imam Taymiyyah has proved that Imam Ahmad bin Hanbal had retracted from his earlier position of accepting the validity of triple divorce and in a later period he used to say that when he reflected on the Qur'anic position he came to the conclusion that it permits only *raj'i talaq*, ie, divorce in which the wife can be taken back. He then took the position that even if someone pronounces triple divorce it should be treated as one only. The husband thus will have the right to take his wife back

within the 'iddah period ■ go for *nikah* if the 'iddah period has expired. Imam Ahmad's companions and disciples also adopted this position. Many companions of the holy Prophet like Ibn Abbas, Hazrat Ali, etc, also were of this opinion. Some have quoted companions like Abdullah bin Mas'ud, Abdur Rahman bin 'Auf and Zuber bin al-Awwam also adopting this position. Ahl-e-Hadith also are of the opinion, ie, that triple divorce is not valid. The Ithna 'Asharis (ie, twelve Shi'as) and Imamiyas believe that if three divorces are pronounced together, even one divorce does not take place, let alone three. Even some Hanafi jurists like Hajjaj bin Artat and Muhammad Ibn Muqatil believe that if one pronounces three divorces, no divorce will take place.

Maulana 'Usmani tells us that according to Muhammad Muqatil one of the two opinions of Imam Hanifa was that only one divorce will take place if three divorces ■■ pronounced. Similarly according to Imam Tilmisani Imam Malik also held the opinion that only one divorce takes place if three divorces are pronounced. 'Usmani also quotes from Hafiz Ibn Hajar's *Fath al-Bari* to the effect that many eminent jurists held that if one pronounces three divorces, only ■■ takes place.

From among the 'ulama of later period, Sheikh Shaltut, who was Sheikh al-Azhar, writes in his *Fatwa* that if one gives three divorces, only one divorce *talaq-i-raji'* will take place and the husband will have the right to take his wife back by saying so or by having sexual contact with her. Another prominent 'Alim 'Allama Rashid Rida' in his *Tafsir al-Manar* (Vol.IX, p. 683) has expressed a similar opinion. Another contemporary eminent, Arab 'Alim Shaikh Jamal al-Din al-Qasim has discussed this problem at great length in his book *al-Istinat* and has concluded that triple divorce has no validity and it should be treated ■ one divorce only. Quoting all these authorities Maulana 'Usmani says that triple divorce is not in keeping with the rulings of the Qur'an.

After quoting all these authorities Maulana 'Usmani discusses the whole issue in the light of the holy Qur'an. He refers to the Qur'anic verse 2:229-30 which begins with *Al-talaqu marratan*, ie, divorce may be pronounced twice. He says the word *marratan* implies ■ gap between two pronouncements (all Hanafi jurists accept this) which means there should be a large enough time-gap between the two pronouncements of divorce. *Marratan* (twice)



itself carries this sense. When we say 'I went to your house twice but you were not there' cannot mean one went to his house twice in one go but after some reasonable gap of time. Once he went, he was not there, then again he went, he was not there. Thus the act of going had to be accomplished in two different periods of time. 'Usmani then quotes other verses of the Qur'an where the word *marratan* occurs and explains that everywhere it implies a gap of time in between.

Then he raises this question: despite triple divorce being sinful, innovative and against the Qur'an will it occur if someone pronounces triple divorce? The second question which he raises is: did anyone make such mistake (of pronouncing triple divorce) in Prophet's (PBUH) time and did he accept it as triple divorce? Or did he take it to be one divorce only? And lastly, when would the practice of triple divorce start again?

Taking the first question he argues that in the Qur'an, *nikah* is described as *misaaan ghaliza*, ie, strong bond and has explained how and with whom one can enter into this strong bond and this strong bond cannot be dissolved without proper reason and method. It certainly cannot be dissolved whimsically. A man has to pass through different stages to bring about reconciliation either by persuading his wife to behave properly, ■ by appointing arbitrators as per Qur'anic injunctions (4:35). If all this fail only then recourse can be taken to divorce. Thus, according to the Qur'an, divorce is not an arbitrary and whimsical thing. The method prescribed by the Qur'an for divorce is that one can give divorce twice only, ie, on two different occasions and then either he has to keep the woman with kindness or leave her with benevolence. In pre-Islamic Arab society they used to pronounce divorce even one thousand times and keep the sword of divorce hanging on her head. The Qur'an disallowed it and permitted pronouncement of divorce only twice. The Maulana says that even giving divorce in three periods of purity (pronouncing divorce once in every period of purity thrice is also not proved by the Qur'an and is thus prohibited. Once *talaq* is pronounced once, it takes place and woman goes out of marital bond at once and is now free to marry another man after completing the period of 'iddah. Why then pronounce *talaq* more than once? For what reason? Repeating the word more than once is just absurd, says

the Maulana. *Talaq* should not be pronounced more than once in any case.

He then takes up the second question — whether anyone had divorced thrice in the Prophet's period? And did he accept it? He then quotes from *Sahih Muslim*, Imam Abu Da'ud, etc, to show that during the holy Prophet's time, during Hazrat Abu Bakr's time and for two years during Hazrat 'Umar's time three divorces given at a time were taken as one divorce only. But after two years of his *khilafat* period Hazrat 'Umar again enforced it as people were misusing it and there were several complaints.

Maulana 'Usmani quotes from *Musnad Ahmad Ibn Hanbal* that once Rukanah pronounced three divorces against his wife but later he was very sorry for it. When the Prophet (PBUH) asked him, "How did you divorce your wife?" Rukanah replied that he had pronounced three divorces. The Prophet asked, "Did you pronounce it in one sitting?" When he said, "Yes", the Holy Prophet said, "Treat it as one divorce only and if you want you can take your wife back." And Rukanah took his wife back.

This *hadith* of the Prophet narrated by Ibn Abbas is found in *Sahih Muslim*, *Sunan Abu Da'ud* and other authentic collections of *Hadith* literature. No one has questioned its authenticity pertaining to marriage, divorce, inheritance or custody of children. In certain respects his views on the treatment of women differs radically from other traditional jurists. Also he bases his views entirely on the Qur'an and *hadith*, nothing else and comes to entirely different conclusions from many other noted traditional jurists. The Maulana has written his magnum opus *Fiqh al-Qur'an* in eight volumes. The book which is written in Urdu is a veritable treasure of Islamic jurisprudence though it is written in a traditional style and full of repetitions.

Here we will take up some aspects of women's position in Islamic jurisprudence which the Maulana has dealt with. Maulana Ahmad, as pointed out above, had very liberal views as far as polygamy is concerned. While discussing the question of polygamy (*ta'addud-e-izdiwaj*) the Maulana goes to the very root of the word used in this regard. For either spouse the word used in Arabic is *zawj* which means both husband or wife. Thus he points out that the very word *zawj* implies one husband and one wife. For marrying the word in Arabic is *zawwaja* or *tazawwaja* (he/she

married) and this means he married one woman (or *zawwajat* – she married a man). He points out that *zawwaja* cannot mean that on one side there would be ■ man and on the other four or five women.

Then he goes on to argue against polygamy by referring to the Qur'anic verse (4:1), 'O people, keep your duty to your Lord, who created you from a single soul and created its mate?' All traditionists (*Muhaddithun*) accept it. Only some of them point out that Ibn Abbas had given ■ *fatwa* (religious opinion) against it. But it is not important as Ibn Abbas has given *fatwa* rejecting the validity of triple divorce and Imam Ibn Taymiyyah has given preference to it and he has proved that Ibn Abbas's other *fatwa* accepting validity of triple divorce is weak.

Maulana 'Usmani points out that Hazrat 'Umar had enforced triple divorce as *triple divorce* and it had become law. It is within the power of the caliph of the time to enforce certain ordinances in view of the prevailing situation, or to meet some crisis situation and no one can question it. It is, therefore, possible that Ibn Abbas might have given a *fatwa* accepting triple divorce after Hazrat 'Umar enforced the ordinance. The original *hadith*, accepting three divorces as one, therefore, is not affected, maintains 'Umar Ahmad 'Usmani. Thus it is proved by this *hadith* that during the time of the Holy Prophet triple divorce, if pronounced by someone, was accepted as ■ divorce only.

Then the Maulana takes up the third question — when did the triple divorce begin to be accepted as three divorces? It is well known that Hazrat 'Umar, after the initial two years of his Khilafat, had enforced triple divorce as triple divorce and no one will be permitted to take his wife back after pronouncing three divorces in one go. To substantiate his point the Maulana refers to the noted Egyptian historian Muhammad Husain Haykal's book '*Umar al-Farouq*' in which the author says that 'Umar made such an *ijtihad* (interpretation) in what is well established Qur'anic injunction in 2:229-30 (Divorce is twice ... which we have discussed in detail above) that until today we are opposing him in this matter. The Qur'an requires all attempts for reconciliation before ■ divorce (4:35).

Then Maulana 'Umar Ahmad further quotes from Haykal's book to show why Hazrat 'Umar was constrained to enforce triple

divorce despite the Qur'anic injunction contrary to it. Muhammad Haykal says that when the Arabs conquered Iraq, Syria, Egypt, etc, the women prisoners from these regions were brought to Mecca and Medina. These women were very attractive and charming and the Arabs were captivated by their charm and wanted to marry them. But these women insisted on the men giving irreconcilable divorce to their former wives. To satisfy them they would pronounce triple divorce and pretend to having divorced their wives for good.

## MAULVI MUMTAZ ALI KHAN – AN ADVOCATE OF WOMEN’S RIGHTS IN ISLAM

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Muslim women found an advocate of their rights from a very unusual quarter — a Maulvi — in the nineteenth century. In the nineteenth century the Muslim women had to live in strict *purdah* and nearly subjugated to their fathers or husbands. There was no question of their independent existence, except in exceptional cases. As a general rule the women were excluded from public life and were secluded in what was called the *zenana* section of the house. A house in those days was divided in two parts: *mardana* and *zenana* (ie, men’s and women’s quarters). Besides husband, father and son, only a close male relative could enter the *zenana*. Even if women went out, they went out in a *palki* (palanquin) wrapped in curtains.

The ‘ulama were more concerned then — and even now — to maintain feudal traditions rather than uphold Qur’anic pronouncements in the holy Qur’an. Their prejudice against women was so strong that they would rather accept some *ahadith* (Prophetic traditions) of doubtful authenticity than the clear and categorical pronouncements of the Qur’an. These ‘ulama kept quiet when the Britishers deprived Muslim women of their right to property in landed estate at the insistence of the zamindars of UP — an enactment totally against the categorical Qur’anic teaching. It was, therefore, quite surprising that Maulvi Mumtaz Ali Khan took up the cause of Muslim women and wrote a tract on the subject entitled *Huququn Niswan* (Rights of Women) in Urdu which had 188 pages. It is quite a scholarly work and needs to be closely studied. Everything he says in defence of women’s rights is on the basis of the Qur’an and authentic *hadith*.

The very first chapter is entitled "*Aurat aur un per Mardon ki Jhooti Fazilat*" (Women and false superiority of men over them). He says that men and women belong to the same human species. There cannot be any superiority of ■■■ over the other as human beings. But there are some specific differences between men and women (ie, biological) and to that extent there can be some differences in their duties and civilisational ways (*tara'iq-e-tamaddun*). Except such differences which are based on gender differences, whatever is said, superiority of men over women will be based on personal differences of opinion and such differences of opinion are temporary and unreliable (*arzi* and *ghayr mu'tabar*).

Then he goes on to say that whatever the claim of superiority, it is based on the false premise of men being rulers and women ruled. They claim similar rights over women as on property. What is worse, according to the Maulvi, is that men try to give rational arguments on their claims of superiority and ascribe it to God. We want, the Maulvi says, to expose the falsity of such claims. This is the purpose of writing (this book). Then he reveals the plan of his book which he divides into five parts. In the first part he proposes to examine the reasons given for superiority of men; in the second part he discusses about education and women; in the third section he talks about women and veil; in the fourth section he throws light on ways of married life, and finally in the fifth part mutual-living is taken up.

Mumtaz Ali Khan argues the case of women with great verve and enthusiasm. He totally rejects the argument that men's superiority rests on physical strength as was argued in those days. He writes — who says that men should not do hard work and work involving great physical strength? Let ■■■ do such work if he so desires, let him cut mountains, trees or human throat. But the real question is: can they claim superiority (over women) on this basis? They do not give any argument for such a claim. But if physical strength entitles anyone to superiority can beasts of burden claim this over men? Thus men have the same superiority over women as these beasts have over men, according to this argument. Then also, the Afghans are stronger physically than the *babus* of Calcutta, and the Sikhs are physically stouter than the *banias* who are characterised ■■ cowards. Can this accord superiority to physically more stout and healthy?

For a second argument about rational superiority he says that there is no proof from the physiological point of view that a woman's brain is lighter or less efficacious than that of man, and even if it be so then it is not by virtue of her femininity but because of conditions in which they are brought up. A female child's upbringing is totally neglected (it is also a feminist argument today) and they are subjected to such mental influences that they may develop mental weakness, impatience, swift-changing mentality, easy of belief and unsound of opinion. As they are made unequal from the beginning how can men's superiority be realistic and principled?

Then he takes up the religious argument that there has been no women prophet. He gives a threefold reply to this argument. Firstly, according to Muslim belief there have been 124,000 prophets of whom not more than 30 have been named. Thus we do not know anything about one lakh twenty-three thousand nine hundred and seventy prophets. One therefore cannot say whether all of them were men or women. By knowing just about a few we cannot generalise for all. Secondly, to keep women away from such work which is very hard to perform and which requires separation from family for a long time at a stretch shows her high status (*'uluw-e-shan*). Allah has provided her with more comfort and ease. This argument in favour of women seems to be weak and rather unacceptable by feminists today. But it had some relevance then.

Thirdly, Mumtaz Ali also makes it clear that he does not maintain that all men are equal to all men but that ■ ■ human species there is no difference between them. It is also true that some men are superior to other men, some women over some other women and that some men ■■ better than some women and ■■■ women than some men. But this is for incidental factors (*arzi asbab se*). But one cannot prove the superiority of the entire group on account of the few members of that group.

He then takes up theological arguments to disprove men's superiority over women. He says that the biggest proof men cite of his superiority is verse 4:34 which says, "Men are maintainers of women, with what Allah has made some of them to excel over others and with what they spend out of their wealth." Some people render *qawwam* as ruler, ie, men are rulers over women. He shows the falsity of this rendering and cites the noted 'alim Shah



Waliyullah who renders it ■ *tadbir-e-kar kunindah*, ie, manager of affairs. He then argues at length the meaning of, "Allah has made some of them to excel over others," and concludes that this also does not prove men's superiority over women. Then he discusses the meaning of the word '*qawwam*' which is the key word in the above verse. He says that *qawwam* is an exaggerated form of '*qiyam*' which means one who has to stand much outside his home to work and earn his living. It is in this sense that men are *qawwam* for women. He makes an interesting point that rather than proving the superiority of men over women, this verse proves that man has to work for a comfortable living of women, that is, man is at the service of woman.

Maulvi Mumtaz Ali then takes up another theological argument that men are superior as their testimony is equal to that of two women and that man gets twice as much by way of inheritance. The Maulvi argues that this also does not prove man's original and natural superiority over woman. Several things need to be taken into account here. Firstly, women have been kept in such a condition that they have neither proper education nor worldly experiences. If such women are made to give testimony they may err or even commit a blunder. Also the verse which is about a woman's testimony being half valid is about taking of a loan and in financial matters, accountancy, drawing up documents. Women (in those days) had no competence and hence they could not remember such matters as much as men could, and it is for this reason that two women were required to give testimony in place of one so that if one forgets the other could remind. When the Qur'an itself, Mumtaz Ali argues, has not given this reason for her testimony being half that she is inferior by nature and creation then who are these jurists and 'ulama to do so? Also, the Qur'anic injunction in this respect is optional and not compulsory or obligatory. I think the last argument given by Mumtaz Ali has not been employed, to the best of my knowledge, even by modernists today. It is an important argument. It is also interesting to note that what Mumtaz Ali said in all these matters in the late nineteenth century the modern defenders of women's rights are saying today exactly ■ hundred years after.

Mumtaz Ali also rightly says that had ■ woman's testimony been half that of a man on principle and because of creational or inherent biological defect in her nature, her testimony in matters

of marriage, divorce, *hudud* laws (retaliation) would also have been included in that category. But the Qur'an does not make such a distinction between male and female testimony in these matters and that clearly show that in financial matters her testimony was required to be propped up by another woman only for reasons of lack of experience and expertise. He even cites a *hadith* according to which a woman's testimony is found to be more reliable than that of a man. In *Sahih Bukhari*, Mumtaz Ali says, there is a tradition according to which 'Aqba bin Harith's marriage was dissolved by the Prophet on the testimony of one woman.

He advances one more interesting argument not so far employed by any other champion of women's rights. He says that two women were required for testimony — often a woman is handicapped by her physical condition (menstrual period or advanced pregnancy or delivery), the other woman can testify in her place. It is only woman who enjoys such a privilege, not man and hence this verse proves her superiority rather than lesser status.

Then he takes up the case of inheritance. He maintains that the unequal share of man and woman does not indicate superiority of man at all. The whole burden of maintenance of a woman is on her man and woman has been entrusted with the far easier domestic work. Obviously, this argument will not be bought by the feminists today as they resent women being a role-model for domestic work. But Mumtaz Ali advances this retaliatory argument keeping in view the context and conditions of his time. Thus Maulvi Mumtaz Ali rejects vehemently the argument that women are inferior as they get a half share in their father's property.

He now takes up the argument that Adam was created first by Allah as man is higher in status. The Maulvi dismisses this argument out of hand and turns the table on female baiters by saying that Allah did not want to see a woman without an attendant (*khidmatguzar*) for a moment, so He first created man so that woman does not experience discomfort even for a moment. Then he goes on to say that the belief that Allah first created Adam and then Eve (*Hawwa*) is of Jews and Christians, not of Muslims. It has no validity in Islam. There is no proof from the Qur'an that Adam was created first and then Eve as it talks of creation in pairs.

The argument that man has been permitted to marry four wives and a woman cannot take four husbands has also been used as a proof of man's superiority. But Mumtaz Ali dismisses it also out of hand. He characterises it as a false statement. In his opinion the words of the Qur'an that "marry such women as seem good to you, two, or three, or four" (4:3) are quite vague and hardly amount to a clear permission to marry four wives. He, on the other hand, thinks that to marry more than one wife at a time is not allowed at all. One who marries more than one at a time is indulging in sin (*haramkari*). Firstly, there is vagueness in the verse cited (ie, 4:3). It is not clear from this Divine injunction that it is permissible to marry four of them at a time or to marry another after the first one dies and the third after the second one is dead and to marry the fourth after the third is no more and then not to marry after the fourth at all. Or, it can also mean that if the first wife is unable to perform the duties of a wife (*haqq-e-zawjiyyat*) to marry the second and if the second is crippled, the third and then the fourth in this manner. Or, it may mean to marry the second after divorcing the first, and the third after divorcing the second and the fourth after divorcing the third and no fifth marriage is permitted after this. No meaning of all these meanings mentioned here can be firmly established (from the wordings of the Qur'an). Therefore, we feel this ~~verse~~ is vague in meaning (*mujmal*) and for this reason no firm rule for the *shari'ah* can be obtained. The 'ulama may or may not agree but a second marriage can be contracted only with the permission of the first wife and her relatives.

He then gives an example from the holy Prophet's conduct. According to *Sahih Bukhari* (one of the authentic collections of *hadith*) when Ali wanted to marry a daughter of Abu Jahl (after she embraced Islam) in the lifetime of Hazrat Fatima, the Prophet was very angry. He mounted the *minbar* (pulpit) and said, "These people (relatives of the girl whom Ali wanted to marry) want my permission to marry off their daughter to a person married to my daughter. So I refuse to give permission, refuse to give permission, refuse to give permission. And if Ali wants to do so, let him divorce my daughter and then take another wife. She (Hazrat Fatima) is part of me; one who misbehaves with her, misbehaves with me; one who harasses her, harasses me." From this *hadith* it is clear that people in the Prophet's time clearly understood from the verse (4:3) that it is necessary to obtain permission of the first wife

and her parents and it is proved from the Prophet's intense refusal that it is the privilege of the other party (ie, the wife and her parents) to agree or not.

He further says that it can be shown that at the time of *nikah* the 'ulama agree that woman can stipulate a condition that he (husband) will not take another wife. This itself shows that a second marriage depends on the agreement of the first wife. Thus it is not possible, as people think, to obtain a general rule for up to four marriages from the Qur'an. Then he further reinforces his argument by quoting another verse 7:40 ("Those who reject our messages and turn away from them haughtily, the doors of heaven will not be opened for them, or will they enter the Garden until the camel pass through the eye of the needle") and says that verse 4:3 should also be understood in this light. As rigorous justice is essential with all wives and if one can do justice is free to take four wives, it is as difficult to do equal justice as the entering of a camel through the eye of the needle. Thus it is only a manner of saying that one can marry as many wives as one wishes if one can do justice rigorously with all and not really a permission in the usual sense to marry up to four wives.

Then Mumtaz Ali Khan deals with the question of *talaq*. The right to divorce exercised by man is such a right that every man should be ashamed of it. Divorce is like a bitter medicine which should be administered only when there is no other way left. Undoubtedly, *nikah* is a contract like other contracts but it cannot be adhered to forcibly as it pertains to the hearts of two persons bound by marriage. Hence divorce is no privilege or a sign of superiority. The holy Prophet has condemned it strongly as the worst of all that is permissible in the sight of Allah and man uses it as a sign of superiority. So if man has the right to divorce it is no sign of being superior but it is something to be ashamed of. He then argues at length against the undesirability of divorce and also gives examples from the Prophet's time that women also in certain cases can obtain *khula* (freedom from marital bond). Thus right to divorce is no matter of superiority at all (Please see Mumtaz Ali Khan's *Huququn Niswan*, Hyderabad, nd, pp 2-30).

Then Mumtaz Ali Khan deals with the question of *hijab* (veil) in his book. He says that whatever is said about (Muslim) women, the question of *hijab* is most important in as much as it is very difficult to bring about a change in its practice. In those days it was

really impossible for women to give up *purdah*. She was strictly confined to home. It was in the case of the women of the *shurafa* (upper) class. *Purdah* was very rigorously enforced among them. Hence Mumtaz Ali maintains that to bring about change in this practice is most difficult.

For him *purdah* means concealing the parts of the human body and in this sense it is natural both for man as well as woman. Both conceal parts of their bodies not only to protect them from heat and cold but also on account of the sense of shame (*sharm-o-haya*) which is a product of human culture and civilisation. Women, according to him, have a much greater sensitivity in this respect (this sensitivity is also relative and culture-specific). It is this seed in her nature which flowers in the *shari'ah* as a full-fledged rule for *purdah*. He, however, ~~maintains~~ that the *purdah* practised in India is not the *shar'i purdah*. It is specific to India.

He, therefore, feels it necessary to throw light on this question from the Qur'an and *hadith*. He then goes on to quote the relevant verses from the scripture. First he quotes 24:30-31 which read as follows: "Say to the believing ~~men~~ that they lower their gaze and restrain their sexual passions. That is purer for them. Surely Allah is aware of what they do. And say to the believing women that they lower their gaze and restrain their sexual passions and do not display their adornment except what appears thereof. And let them wear their head-coverings over their bosoms. And they should not display their adornment except to their husbands or their fathers..."

He then says that in the first verse men have been advised to cast their glance low and be chaste. Similarly women also have been required to lower their gaze and maintain their chastity. Up to here both have been treated equally. Women have not been told to observe *purdah*. But since women are extra-sensitive they have been asked to show it in action by not deliberately exhibiting their adornments publicly. The Arab women (as other tribal women) used to keep their breasts open which was an act of shamelessness. To prohibit this practice ~~men~~ were required to throw a garment over their bosoms. But it can be exhibited before a husband or father and any other relative with whom marriage is prohibited or children or guileless servants. Here the Qur'an also specifies that what should remain open should remain open.

Thus in this verse there is nothing which requires women to veil themselves or not to go out of their houses, Mumtaz Ali argues. Then he quotes verse 33:33. This verse says, "And stay in your houses and display not your beauty like the displaying of the ignorance of yore..."

According to Mumtaz Ali in this verse women have been prohibited specifically not to display their beauty as in the days of ignorance (*jahiliyah*) and the requirement to stay at home is only to prevent displaying *jaunts* in public places and this certainly does not mean that women cannot go out of houses for necessary work. This verse only tries to prevent, he argues, unrestrained, shameless and indiscreet jaunts in public (*awargi*) and not a restriction on women not to move out.

In support of his view he also quotes from the *hadith*. The *hadith* has been narrated by the Prophet's wife A'isha. She says that once Hazrat 'Umar saw Saudah bint Zam'about roaming and warned her not to do so. She came to the Prophet and asked him whether she can go out. The Prophet was eating in A'isha's room. He said Allah has permitted you to go out for your necessary work. He also says that during the holy Prophet's time his wives used to go out for necessary work, for Eid prayers and similar other activities. He also refers to the story of the Prophet taking A'isha for the performance by the *Habashi* (black) players. He also refutes the contention by Imam Nuwavi that A'isha at that time was of minor age. He also points out that this verse of the Qur'an is not applicable to all Muslim women as it particularly addresses the wives of the Prophet. He then quotes both the relevant verses, 33:32-33:

O wives of the Prophet, you are not like any other women. If you would keep your duty, be not soft in speech, lest he in whose heart is ■ disease yearn; and speak ■ word of goodness.  
And stay in your houses and display not your beauty like the displaying of the ignorance of yore ...

Then he quotes the third verse 33:59 which is generally quoted in support of the *pardah*. The injunction in this verse that women "let down upon them their over-garments" is not an absolute one and of abiding nature. The Maulvi says in his book that this verse was revealed in the specific context. Some bad characters (*badmuash*) used to indulge in teasing Muslim women. Some

hypocrites who had apparently embraced Islam were particularly harassing them and when caught they would pretend that they did not recognise that they were Muslim women. Muslim women stopped going out for fear of being harassed. Thus Allah issued this injunction that they pull down their over-garment on their faces so that they be recognised as Muslim women and not harassed. It does not, Mumtaz Ali argues, support the kind of *purdah* prevalent in India. There is no other verse in support of *purdah* in the Qur'an except this verse. The kind of *purdah* observed in India, he maintains, cannot be supported by any pronouncement of the Qur'an and it has been invented by Indian Muslims themselves.

He then refers to *Fatwa 'Alamgiri* to further support his argument against *purdah* prevalent in India. *Fatwa 'Alamgiri* is the compilation of *fatwas* issued on various issues by the 'ulama of Aurangzeb's time. This compilation also discusses the issue of *purdah* in great detail. It divides it into four categories: (1) man seeing man; (2) woman seeing woman; (3) woman seeing man and (4) man seeing woman. According to the *Fatwa* in the first three cases it is not permissible to see the portion of the body between the naval and the knees. And as for the fourth section, ie man seeing woman, it has again been divided into four sub-sections: (1) man seeing his wife; (2) man seeing those women within prohibited degree of marriage (*dhawat-e-maharim*); (3) man seeing alien free woman and (4) man seeing slave-girls belonging to others.

He then skips the first and fourth cases and refers to the second and third cases. As for the second case, ie, seeing women within the prohibited degree of marriage (mother, sister, aunt, etc) the *Fatwa* says that one can ■■■ their apparent as well as concealed (*zahiri* and *batini*) parts of beautification like head, hair, neck, breasts, ear, arms, legs, feet, face, etc, and ■■■ for the third category it is said in *Fatwa Alamgiri* that one can see the face and hands of an alien free woman. And Hasan has quoted from Abu Hanifa that you can look at their feet also and according to other narrations it is not permissible (to see the feet). According to Abu Yusuf in *Jami' al-Baramikah* one can see the arms of a woman which become bare while washing or cooking.

Then it is also mentioned in *Fatwa Alamgiri* that ■■■ non-believing woman is like a believing woman (in matters of looking



at her). And in *Fatwa Qazi Khan* it is mentioned that as for women falling within the prohibited degree of marriage one can look at their faces, hair, head, breasts, arms and legs but not at their back or belly or the portion between the navel and knees.

As to the argument that it is necessary to keep women in *purdah* to protect them from the lust of men, Mumtaz Ali argues that according to this argument ■■■ must close sweetmeat shops just because some people cast covetous eyes at sweets. This is an absurd argument. Women must have their freedom and those men who cannot control themselves better not see alien women at all rather than forcing women to veil themselves (See 60-78 of *Huququn Niswan*, op cit).

Thus it will be seen that Maulvi Imtiaz Ali Khan defended women's rights with all possible arguments based on the Qur'an and *hadith*. He comes very close to modernist position in this respect. In certain respects he even outstrips the modernists. His work is thus very valuable for Muslim women even today. It needs to be widely publicised.

## SIR SYED AND THE CONCEPT OF WOMEN'S RIGHTS

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Sir Syed was a modernist and championed the cause of modern education among Indian Muslims. He was not only a scholar and educationist but also a man of future vision. He did everything possible to popularise modern scientific outlook among Indians in general, and, among Indian Muslims in particular. He got many scientific works translated into Indian languages as to make them available to Indian people.

It is well known that he founded the Anglo-Mohammadan Oriental College in Aligarh which became the Aligarh Muslim University in 1920 much after the death of its founder. However, very few people know that Sir Syed was not only a modern educationist but also was a profound scholar of Islam. His Islamic learning was second to none. He knew Arabic well and had great knowledge of the holy Qur'an so much so that he undertook to write a commentary on it (*tafsir*). A glance through his commentary on the holy book shows that he had mastery over the Qur'anic knowledge (*Qur'ani 'ulum*). However, his approach was modern and the orthodox '*ulama* would not agree with him. He was close to M'utazalites (Islamic rationalists) in understanding Qur'an. In a sense he was also very close to Shah Waliyullah, the great '*alim* and prolific Islamic writer of eighteenth century India. He approvingly quotes him while commenting on various Qur'anic verses. But he also quotes *Tafsir-e-Kabir* of Imam Fakhr al-Din Razi approvingly for explaining a number of Qur'anic verses. Thus it will be seen that Sir Syed is quite versatile and has a profound knowledge of the Qur'anic exegesis.

Sir Syed sets out the methodology of his *tafsir* in the beginning. He has evolved 15 principles which he bases his commentary in

the introductory part of his *Tahrir fi'Usul al-Tafsir*. In the very beginning he says that the main motive of writing this exegesis is to attempt secular and religious reforms. Secular reforms could be undertaken on their own grounds but for religious reforms it was necessary to explain the Qur'anic positions on the concerned issues. His main concern was that the modern knowledge ('ulum-e-jadidah) is apparently in conflict with the Islamic beliefs ('aqa'id). Sir Syed Ahmad Khan went through various classical commentaries and was not satisfied. He found nothing but stories in the exegetic literature most of which have been taken from Israeli sources. They are hardly in conformity with the Qur'anic spirit. He then began to reflect on the contents of the Qur'an himself and evolved his own 15 principles of Qur'anic exegesis.

We are not concerned here with all the 15 principles which Sir Syed evolved after a great deal of reflection. One of the principles of his exegetic methodology is that the contents of the Qur'an are quite true and it contains nothing which is wrong or contrary to observable facts. Thus in principle 9th of his exegesis Sir Syed rejects the belief in miracles. He maintains that there is nothing in the Qur'an which is not in conformity with the laws of nature. He quotes Shah Waliyullah whom he describes as *hujjatullah* and *hujjatul Islam* (ie, proof of Allah and proof of Islam) to prove his point that there is no concept of miracle in the Qur'an.

In his *Tafsiimat al-Ilahiyah*, Shah Waliyullah says that Allah has not mentioned any miracle in His Book, nor indicated anything of the sort. Sir Syed further clarifies this by maintaining that it is not only during the lifetime of the Prophet of Islam that miracles did not occur but during earlier prophets' times also. Thus according to him there is no place for anything which contradicts the law of nature *Sunnat Allah*. He also maintains that in the Qur'an there are no verses which have been abrogated. Thus he negates the very concept of abrogating and abrogated verses (ie, *nasikh-o-mansukh*). He also maintains that the word of God cannot contradict the work of God and hence according to him the Qur'anic contents are quite in conformity with nature which is the work of God. In his fifteenth principles of *tafsir*, Sir Syed maintains that though the Qur'an is the word of God yet like in any other language there are similes, metaphors, symbols, etc, in the Qur'anic language also. It also follows the way of Arabic rhetorics. All this has its own implications which cannot be avoided. In understanding of the

Qur'an all this is necessary, ie, one cannot understand it in a mere literal sense.

From all this it is clear that Sir Syed had his own way of understanding the Qur'an. He neither completely rejects the classical exegesis nor imitates it mechanically. He brings to bear his own understanding in developing the Qur'anic exegesis. This applies not only to understanding of the Qur'anic verses in the face of development of natural sciences but also with respect to developments in the field of social ethics, economic morality, human dignity, sexual equations, etc. This included issues of women's rights also. Though he was not exactly the champion of sexual equality yet he profoundly differs from many classical commentators on issues like divorce, marriage, etc. It is a pity that Sir Syed could not complete his commentary on the Qur'an and thus some of the vital issues pertaining to women's rights remained untouched in his commentary. It is also a pity that no one else later completed it following the principles laid down by him as Shibli Nu'mani's *Siratun Nabi* was completed by his disciple Syed Sulaiman Nadvi. Sir Syed could have completed his commentary but he had to stay his project on account of intense pressure mounted ■ him by the orthodox 'ulama. He had to choose between popularising his religious views or founding the Mohammadan Anglo-Oriental College. He chose the latter as he thought dissemination of modern education will make his religious views more acceptable.

Here in this chapter we would like to examine Sir Syed's views on the question of women. He has written a commentary on the verses pertaining to women in the Qur'an but it is regrettable that he has not commented on many important verses about women though we would have very much liked to know his views about these verses. We will, in course of time, refer to these verses. One of the important verses on women he has not commented upon is 2:228. Most of the modern commentators take this important verse to be the declaration of equality of sexes. Maulana Azad in his *Tarjuman al-Qur'an* also comments on this verse and concludes that it heralds the equality of both the sexes fourteen hundred years ago. Sir Syed, who is Maulana Azad's mentor in a way, simply translates it without any comment. He translates it as women having rights over men just as men have over women. His translation clearly indicates equality of rights of both sexes but, as

pointed out, he refrains from commenting on it as their modern exegetes do. Perhaps, Sir Syed thought his comments would infuriate the conservatives as he was already facing their fire and perhaps, he did not want to further anger them. Whatever the reason, his translation is also quite indicative of his inclination to uphold women's rights.

Similarly Sir Syed refrains from commenting on verse 4:1. This verse also has been widely commented upon by the modernists as the one heralding equality of sexes. The verse says that Allah has created all of you from a single being (*nafs*) and created its mate (*zawjaha*) and spread from these two many men and women. Thus commenting on this verse Maulana Muhammad Ali of Lahore says in his holy Qur'an. Who created you from a single being and created its mate of the same — only declare the unity of the human race and the equality of the male and female (p 186). But again, perhaps for the reasons explained above, Sir Syed simply translates the verse without commenting over it.

However, more glaring is the case of verse 4:35 (4:38 in Sir Syed's translation). Sir Syed's translation of this verse is also close to the conservative point of view. He translates the word *qawwam* as 'tasallut', ie, domination of man over woman. This rendition of the word *qawwam* has been rejected by all modernists and upholders of women's rights. For example, Abdullah Yusuf Ali translates it as 'protectors of women' and Muhammad Asad translates it as 'taking care of women'. Maulana Muhammad Ali, on the other hand, renders it as 'maintainer'. Thus according to these renderings man is protector ■ maintainer or caretaker of woman, not one who dominates over her. Sir Syed's views are otherwise quite progressive about women too as we will show presently but he has adopted quite a conservative viewpoint in rendering this verse. This verse has been quite crucial in determining women's position in Islam. Conservatives and orthodox 'ulama have used it to prove that Allah has subordinated woman to man. The modernists have, therefore, tried to put the verse in its proper perspective. They have specially challenged the rendering of the word *qawwam*.

What could be the reason for Sir Syed's acceptance of traditional concept of *qawwam* ■ one who dominates? On the question of polygamy and divorce Sir Syed takes, as we will see, ■ view quite acceptable to those who uphold women's rights. We

will shortly throw light on these aspects. What could be the reason? Maybe he did not believe in sexual equality as is borne out from the fact that he rebuked Maulvi Mumtaz Ali Khan for writing a book on women's rights in Islam. But when it came to polygamy and divorce he had to defend the Qur'anic positions. He took quite a progressive positions on these matters vis-a-vis the West. His using the word *tasallut* for *qawwam* makes us think this way. Sir Syed, who has deeply thought out the meaning of the Qur'anic words and argued vehemently in favour of rational positions could not have accepted, in passing, the conservative position on *qawwam*. He simply translates it and offers no comment on those important verses about women in the Qur'an. It is difficult to gauge the real views of Sir Syed about the position of women in relation to men. In this respect perhaps he was the product of his time and thought that women should be subordinated to men. It is difficult to say something categorically.

Sir Syed writes a detailed note on verse 2:227 which is on divorce. We are presenting here a brief summary of Sir Syed's views on divorce which he gives on pages 212-216 of his *Tafsir*. He says that the opponents of Islam attack Islam on account of their obstinacy or misunderstanding ■ various counts, one of which is divorce. The Jews cannot accuse Islam in this respect as Moses has instructed his followers to divorce their wives whenever they liked. But some idolaters and Christians who do not have the custom of divorce or do not approve of divorce except in case of adultery can accuse Islam in this respect. They accuse Islam on the basis that this problem (divorce) is against mercy, love and sympathy (for the spouse). But John Milton has disagreed with this view and has proved with good ('*unidah*') arguments that when husband and wife find it difficult to live in a way which is in keeping with the civilised and cultured way, the Bible does not prohibit divorce.

Then Sir Syed draws our attention to the fact that at present there are three codes (*Shari'aten*) before us regarding divorce. The first is of Jews which allow divorce without any strong reason. Sir Syed disapproves of absolute power for divorce and calls such *shari'at* ■ unlikeable and is against compassion, love and civilised way of living. Such unilateral divorce reduces the importance of marriage. Also, if man can pronounce such unilateral divorce man's love for woman and woman's loyalty to man has no

meaning at all. The second *shari'at* is of idol-worshippers and the Christians. Among them there is no concept of divorce except in the case of adultery. It no doubt holds the sacred custom of marriage in great esteem but takes an extreme position in the matter of divorce. Such extremes are against the nature of human beings. If marriage develops unsurmountable problems and it becomes impossible to live together the only available remedy is divorce. The third *shari'at* is that of Islam which deals with the problem of divorce in this and the verses following this and in the guidance provided by the Holy Prophet (PBUH). This truthful *shari'at* has dealt with this problem in such a moderate way (*i'tidal*) that one can think of no better way. No other *shari'at* can deal with this problem in such a civilised manner. The Mohammad's *Shari'at* has allowed divorce only when it becomes impossible to save the marriage and there is no other way available except for divorce.

Men have been exhorted to love their wives and should treat them with goodness and respect and should put up with their strong manners and tantrums. Women have been exhorted to be obedient to men, should love them and be loyal to them. Then it was said about divorce that nothing on earth enrages Allah more than divorce. Then it was said about women that those of them who ask for divorce without any strong reason and without trying all possible remedies, they shall not enter paradise. The Holy Prophet (PUBH) used to be very angry with the news of any divorce that his companions often thought that the business of divorcing needed to be punished by putting a person to death.

Then along with more exhortations against divorce, the Prophet found other ways of sustaining marriages. He required that effecting a divorce should be spread over three stages. After the first divorce if the couple reconciles they can again live together as husband and wife. After the second divorce too, they can effect reconciliation again and live as husband and wife. But if divorce is given the third time again then it becomes evident that this marriage cannot be sustained and it is better that there is complete separation. All these injunctions about divorce are quite in keeping with moderation and human nature. It is said about these injunctions that these are Allah's limits and one should not transcend these limits. And if those people, who object to the concept of divorce in Islam, try to understand it in a proper way, they would realise that this injunction is from One Who has



created human nature (translated from Urdu into English by the author).

Sir Syed does not comment on the other verses on divorce. He gives only this general comment. He does not comment on triple divorce in one sitting which has been prevalent among the Indian Muslims for centuries. He also does not give his comment on the question of women's right to divorce. It is either because such controversy about triple divorce did not exist in his time or he deliberately avoided commenting on such a sensitive problem.

The next important problem is polygamy. Sir Syed has written a long commentary on verse 4:3 ■■■ the question of polygamy. The verse says: "And if you fear that you cannot do justice to orphans, marry such women as seem good to you, two, or three, or four; but if you fear that you will not do justice, then (marry) only one or that which your right hand possess." First of all, Sir Syed explains the meaning of the term *yatin*, ie, orphan. Here by this word he means those girls or unmarried women whose fathers have died. He says that in this verse and the verse preceding it (4:2) any injustice with orphan girls and women has been strictly prohibited. In this verse men have been exhorted that if you fear that you cannot do justice to orphan girls in matters of wealth and their rights, then marry other women. This is because of extreme caution in protecting the rights and wealth of orphan girls and women.

Then he explains the verse further by quoting a *hadith* from A'ishah, wife of the Holy Prophet, which has been narrated in *Tafsir-e-Kabir*. This makes it further clear that the verse permits men to marry up to four wives from amongst other women in order to protect orphan girls' and women's rights and interests. He also explains by throwing light on the grammatical structure of the sentence that here there is no total prohibition for marrying orphans but only to protect their rights and interests. One can marry orphans provided one can do justice to them. Initially Sir Syed justifies polygamy. He says that ■ woman, on account of certain constraints, cannot enter into ■ marriage contract before cancelling the earlier marriage contract whereas man can do and, he says, it is for this reason that Islam did not permit women to marry more than one man at a time. But man's condition is quite different. And besides this, man is concerned with different kinds of civilisational matters with which woman is not concerned.

However, he does not explain what are those civilisational matters. But he also says that men have been permitted to take more than one wife only in certain circumstances and, according to him, to do so, is quite in keeping with nature. But the Muslims have very badly used this provision.

Then he says that original nature requires, if there are no other problems, that man take only one wife. But in certain exceptional circumstances he has to deviate from this natural rule. He also points out that absolute restriction on polygamy would have resulted in a pitiable situation for women. Therefore, Sir Syed says, polygamy in certain circumstances must be permitted. He gives some examples: if a woman is suffering from a terminable disease and is not fit for cohabitation, to desert her would be against the concept of justice, he argues. If a woman is barren and the man intensely desires a child will it not be proper for him to take another wife, he asks. And if you put an absolute restriction on man not to marry another woman, it will lead to moral degeneration.

Sir Syed, while justifying polygamy, also says very clearly that it should not be for fulfilling one's sexual lust. He feels the Muslims have done so. That is why, he feels, Islam has put restriction for unrestrained practice of polygamy. He also draws our attention to the Qur'anic words — if you fear you cannot do justice (*in khiftum alla t'adilu*) — and says that these words are worth reflecting as there is no person who does not fear lack of justice. The Qur'an permits polygamy only when one can fulfil the condition of justice and even if one fulfils this condition it is only permissive and not imperative. Then he goes on to say that in this verse on polygamy the key word which is debatable is 'justice'. The 'ulama, according to Sir Syed have restricted justice in matters of going to the wives turn by turn and in matters of maintenance and they have not made it conditional to love (inclination of heart) which is highly essential to sustenance of marital relationship.

The 'ulama have drawn this inference of justice in going near the wives turn by turn and in maintenance only from one *hadith* which says that the Prophet (PBUH) used to divide his time between his wives in a judicious manner and used to say, "O Allah this is my (judicious) division of time in which I have control. Do not blame me in matters in which I have no control, (ie, equal love)

and you have control." However, Sir Syed does not agree with this approach of justice between wives. Firstly, he does not accept the authenticity of this *hadith* and gives reasons for that. Then he goes on to say that even if we accept the *hadith* as correct then how will one explain the fact that the prophets who are normally not led by their selfish desires would pray to Allah that do not blame them if they incline towards particular women for reasons of lust. It is just not possible as it is against the noble character of the Prophet. He, therefore, concludes that the words 'if you fear you cannot do justice' refers to a great task which cannot be ordinarily fulfilled except by those who are great and pious souls. Such souls are never misguided by their lust. Secondly, Sir Syed says that to exclude equality of love from the concept of justice towards all the wives is a big mistake. In fact, in marital relations love is most fundamental. Love, therefore, is most important as far as equal justice is concerned and it cannot be excluded from the concept of justice towards all wives. Then he quotes verse 30:21 from the Qur'an to prove his point. The verse lays stress on the quietude of mind and love and compassion between husband and wife. Sir Syed, therefore, thinks that love must be included in the concept of justice. Then referring to verse 4:129 he says that this verse also makes it clear that love must be included in the concept of marital justice. The verse says that you cannot do justice even if you want. Had justice referred to maintenance only then it was not difficult even for ordinary souls. They can arrange for equal maintenance but what is impossible to achieve is equal love for all wives. As, equal justice towards all wives is not possible for ordinary mortals, the norm should be one wife only but in special circumstances one can take more than one. This is the conclusion arrived at by Sir Syed.

Similarly, he discusses at length the institution of *muta'* marriage (temporary marriage which is referred to in verse 4:24 according to some exegetes). But he refers to the words of this verse which emphasise chastity and taking in marriage (*muhsinin*) and not for committing fornication (*musafihin*). And *muta'* marriage according to him is like paying money for fornication and the Qur'an can never permit such a thing. He, therefore, thinks that *muta'* marriage is prohibited by the Qur'an which was prevalent in the pre-Islamic period in Arabia. Thus it will be seen that Sir Syed's position has been quite progressive in respect of women though at times he makes certain concession to conservatives. Or maybe he himself held such views sincerely.

## MUSLIM FAMILY LAW: SOME MISUNDERSTOOD ASPECTS EXPLAINED

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The personal law, known as *ahwal as Shakhshiyya* in the terminology of the Islamic jurisprudence (*Shari'a*), covers matters pertaining to divorce, marriage, inheritance, property rights, etc. In India the controversy about the Muslim Family Law mainly pertains to divorce, polygamy and inheritance. The popular concepts, no doubt largely based on reality of practice of Muslim personal law in India today are as follows: (1) that divorce is quite arbitrary in Islam, (2) Muslims enjoy the privilege of taking four wives and they do tend to take more than one wife normally, and (3) that Muslim women are entitled only to half the amount of inheritance their brothers are entitled to. Other questions like dower, custody of children, waiting period (*'iddah*) before remarriage (either after divorce by or death of, husband), etc, are not very much talked about, at least publicly.

Here we would like to throw some light ■ these questions, mainly divorce, marriage and inheritance, not to offer any apologia but to explain the genesis of these laws pertaining to personal matters. This is necessary in order to remove much misunderstandings prevailing both among Muslims as well as non-Muslims about these questions.

It must be understood right at the outset — whatever the 'ulama and theologians might say — the Qur'an does not impose any rigid rules beyond the convenience of human beings. Thus, Mohammad al-Khadari, a leading Egyptian jurist, maintains that the Qur'an has laid down three fundamental principles for developing *fiqh*, ie, jurisprudence, namely: (1) convenience, (2) minimising trouble, and, (3) gradualism (Mohammad al-Khadari, 1973, p 7). He then goes on to quote the relevant Qur'anic verses to

prove his point. In one of the verses it is indicated that the Prophet's function is to remove the burden from them (the people) and the shackles they carry. Again the Qur'an says "Allah does not charge a soul with more than it can bear" (2:286). The Qur'an also teaches people to pray, "Our Lord! Lay not on us such a burden as Thou didst lay on those before us! Our Lord! Impose not on us that which we have not the strength to bear!" (2:286)

It thus becomes the fundamental principle of Islamic jurisprudence that convenience of human beings should be borne in mind while framing any law that they are supposed to follow. And, women are very much part of humanity. The Qur'an clearly proclaims, "And those who do good work, whether male or female, and he (or she) is a believer, such will enter paradise and they will not be wronged the dint of a date stone" (4:124). From this verse and from other verses of the Qur'an<sup>1</sup> it can be easily inferred that the scripture of Islam intends to maintain equality between the sexes.

However, one should not forget the social context within which the reforms are intended to be carried out. The Prophet of Islam was not operating in a vacuum. He was confronted with a definite socio-economic context. He could not have succeeded had he ignored the social structure within which he operated. The background of verse 4:34 of the Qur'an clearly proves this point. This verse accords superiority to man. But an important commentator of the Qur'an, Zamakhshari, claims that "the verse only refers to the social existing superiority of men and has no relevance to control, subjugation or oppression (of women)." He relates that Sa'id b. Rabi'a, one of the renowned leaders of Ansar, slapped his wife. She complained to her father Zaid b. Zuhair who took her to the Prophet and complained of the behaviour of his son-in-law. The Prophet's first reaction was that she should have a right to retaliate. But since this could have created a real uproar in a society where men had complete control, the verse was revealed as a soothing advice to control the violence of man towards women and advising women to adjust themselves in a society which was absolutely male-dominated. It was an interim decision and not an eternal one, (Zamakhshari, 1980, p 33).

It can be easily inferred from this that the Prophet of Islam had to take the social context into account while prescribing rules as regards relationship between men and women. Unfortunately, the

Muslim jurists, in a male-dominated society, eternalised these rules and declared the status of women to be inferior to men under all conditions. If one takes the overall spirit of the Islamic scripture into account one would not be left in doubt about the fact that it intended to accord equal status to men and women. However, the social context was a prohibitive factor and this factor could not have been wished away. The social structure is difficult to change until the society advances to higher levels of material and intellectual achievements.

The status of women in the male-dominated society of Arabia was certainly inferior to men. Women had no decisive role to play in either production or exchange of commodities in Arabian economy. It is also worth noting that in the Arabian economy of the Prophet's time it was the exchange of commodities, rather than their production, which played a decisive role. The caravans had to cross highly inhospitable deserts to ferry commodities for exchange with the affluent centres of the Roman empire in the fertile crescent. It was difficult for women to perform such a hazardous role (like crossing the inhospitable desert of the Arabian peninsula) and they had to stay back looking after the children at home, so they could not be active economic agents. They thus acquired an inferior social status. This reality could not be wished away without first radically transforming the socio-economic structure. Thus the Qur'an had to accede a qualified degree of economic superiority to men. But this in no way lessens their social and religious status. It is quite clear from the Qur'anic verse 33:36 quoted in footnote 1: "Men are in charge of women," declares the Qur'an, "because Allah hath made one of them to excel the other, and because they spend of their property (for the support of women)" (4:34).<sup>2</sup>

Thus we are left in no doubt by the Qur'an as to why men are made in charge of women. They spend their wealth to look after them and they protect them. If the social structure changes to reverse this role of the sexes the women, by the same logic, would acquire the superior role. In our society more and more women are playing the role in production and exchange of commodities or in rendering socially useful services and hence their inferior role cannot be taken for granted any longer. The commentators of the Qur'an have divided the Qur'anic verses into two categories

(apart from other categories, of course): (1) *Mudallilah*, ie, the ones in which reasons for divine injunctions have been spelled out, and (2) *Ghair Mudallilah*, ie, the ones in which no reasons have been spelled out. In the above verse the so-called inferior status to women has been clearly spelled out and once this reason ceases to be valid, the inferiority of women's social status also ceases to hold good. The *ghair mudallilah* verses mostly pertain to metaphysical aspects of religion.

The verses pertaining to polygamy are also *mudallilah* verses, ie, the ones clearly spelling out reasons for permitting polygamy. The polygamy would cease to be permissible if the reasons mentioned no longer hold. The verse on polygamy also occurs in a definite socio-economic context in the Qur'an. There was the problem of orphan girls and their properties. Many of their guardians used to misappropriate these properties or exchange their good ones for their own bad ones. The guardians were allowed to marry these orphan girls up to four as a lesser evil to their unlawfully consuming their properties (Fazlur Rahman, 1983).

The question then arises—why did God permit four wives in order to combat the evil of misappropriation of orphan girls' properties? Is it not replacing one evil by the other? The only reasonable answer to this question is that one must not try to project our modern consciousness into past with radically different social context. The Arabia of seventh century AD could not admit of absolute equality of sexes. Various verses of the Qur'an indicate that on a normative plane this equality was decreed by God but on a pragmatic plane social management did acquire priority which God in His wisdom did accord.

The Qur'an was also deeply concerned with the project of improving the lot of women, oppressed and weak as they were, in the Arabian context. Apart from vesting them with property and other rights, the right of marital contract included, it also required men to treat them with dignity and avoid iniquity in behaviour towards them. The verse on polygamy also exhorts the husbands to maintain equality in behaviour towards all wives or otherwise take one wife only.

It must be noted that both the verses on polygamy in the Qur'an are with specific reference to the orphan girls and their properties.



One of the verses on polygamy says:

They consult thee concerning women. Say: Allah giveth you decree concerning them, and the scripture which has been recited unto you (gives decree), concerning female orphans unto whom you give not that which is ordained for them though you desire to marry them, and (concerning) the weak among children, and that you should deal justly with orphans. Whatever good you do, lo! Allah is ever aware of it ...

You will not be able to deal equally between (your) wives, however much you wish (to do so). But turn not altogether away (from one), leaving her as in suspense. ■ you do good and keep from evil, lo! Allah is ever Forgiving. Merciful. (4:127-29)

Thus it is obvious that both the verses concerning polygamy have been revealed in the context of orphan girls and their properties. It is for this reason that the noted commentator of the Qur'an, Zamakhshari, maintained that the permission for polygamy has been given by God only in case of orphan girls and their guardians. The guardians have the option to marry their wards if they cannot resist the temptation to misappropriate their wards' properties. This is treated as a lesser evil by the Qur'an. Thus the permission for polygamy is not a general licence. All Muslim males, according to Zamakhshari, do not have permission to marry four wives as maintained by the mainstream theologians and jurists. Secondly, even in the case of guardians of these orphan girls strict condition to treat all the wives equally has been laid down. The M'utazila theologians who considered reason and justice fundamental to their theology inferred from the words of the Qur'an, "You will not be able to deal equally between (your) wives however much you wish..." that this condition of treating wives equally cannot be fulfilled and hence polygamy is as good as banned.

The Qur'an, as pointed out earlier, had to choose between polygamy for the guardians of the orphan girls and protecting the properties of this weaker section of the society. And, in the then prevalent social milieu it was a better strategy to secure property as it would make the female stronger than otherwise. With properties secured, these orphan girls could have fought more effectively for their conjugal and other rights. It is not difficult to infer from the discussion above that in the changed social context

it would be injuring the Qur'anic spirit of social and conjugal justice to retain the institution of polygamy, except for some extraordinary circumstances.

The provision for divorce also has been much more misused in the male-dominated society. The Qur'an cannot be said to have encouraged arbitrary divorce. Even if a man desires to take another wife divorcing the former one, the Qur'an lays down that he cannot take back from her the dowry or gifts given to her. "And if you wish to exchange ■■■ wife for another," says the Qur'an, "and you have given unto ■■■ of them a sum of money (however great), take nothing from it. Would you take it by way of calumny and open wrong?" (4:20)

The Qur'an also did not want to reduce women to — what we would call in today's parlance — as a mere sex object or an object of man's lust. The Qur'an says unequivocally, "Lawful unto you are all beyond those mentioned, so that you seek them with your wealth in *honest wedlock, not debauchery*" (4:24) (*emphasis supplied*). The Qur'an throughout lays emphasis on the personality and dignity of women and strongly condemns any attempt to reduce her to an object of lust.

Divorce is certainly not arbitrary as it has become a practice today in ■ male-dominated society. The Qur'an lays down that either woman should be retained with honour or released with kindness (2:239). These words ■■■ pregnant with ethical responsibility. Further, the Qur'an says, "When you have divorced women, and they have reached their term (period of waiting), then retain them in kindness ■■■ release them in kindness. Retain them not to their hurt so that you transgress (the limits). He who does that has wronged his soul" (2:231).

Thus it becomes very obvious that divorce has been prescribed by the Qur'an not to harass or subjugate the woman but to avoid causing her hurt. Either one must retain her in wedlock with due honour or release her with kindness if marriage becomes incompatible. Moreover, the Qur'an has ■■■ provision for triple divorce in one sitting (the arbitrary use of words *talaq, talaq, talaq*). The divorce formula pronounced thrice in one sitting was in fact introduced later during the period of the second caliph Hazrat 'Umar by way of punishment. It has no Qur'anic sanction. Imam Ibn Taimiya, the fourteenth century jurist, maintained that three

divorces in one sitting had ■ basis in Islamic *shari'ah*. Fazlur Rahman, therefore, rightly points out "... that something that was intended as a penalty itself became ■ major crime against society — particularly in the lower strata of the society where a man in ■ fit of temper would very often resort to this form of divorce — until the recent family reform laws were enacted in most Muslim countries" (Fazlur Rahman, 1983).

The Qur'an also makes ■ clear that the divorced women have every right to marry again, if they so desire. The widows can also marry of free choice and during the period of waiting (four months and ten days, in case of the death of husband) they can even be conveyed or hinted at for marriage. "Such of you," says the Qur'an, "die and leave behind four months and ten days. And when they reach the term (prescribed for them) then there is no sin for you in aught that they may do with themselves in decency. Allah is informed of what you do" (2:234).

The Qur'an, in short, nowhere appears to be unfair to women in spirit. It does grant superior status to men in certain respects but it is more in view of the social context rather than ■ ■ normative prescription. In other societies women did not enjoy the right to property or inheritance as late as the twentieth century. The Qur'an gives her right to property as well ■ to inheritance. The Qur'anic law has been criticised for giving a daughter in inheritance half that of the son. But ■ must also remember that men were charged with the duty of spending their money for looking after their wi■ and children, women having ■ such responsibility. Moreover she also receives dower from husband and also inherits both as mother and as wife, according to the Qur'anic law. The man, on the other hand, not only has to look after his wife and children as a matter of duty but also has to pay dower while marrying.

Thus *Ikhwanus Safa*, the encyclopaedic work of 10th and 11th centuries, interestingly point out, while discussing the position of women:

Brother! many of the intellectuals, who engage themselves in the study of philosophy and metaphysics when they reflect with their rationality upon the Divine laws and compare them with their own thought, discretions and understanding, their judicious acumen (*ijtihad*) and comparative reasoning (*Qiyas*) lead them to feel that most of the divine scriptures appear to be against justice, truth and

rectitude. All this is because of their deficiency in understanding, paucity of discretion and lack of knowledge about the essence of secrets of Divine law. For example, when they reflect upon the rule of inheritance that a male will have twice the share of a female, they feel that the correct position should have been the female getting twice the portion of a male. For women are feeble and have no genius for earning money. They (the intellectuals) do not know and understand that the rule laid down in the Divine law actually lead to what they hint at and desire for.

When the Divine law laid down that the male will have twice the portion of a female, it also laid down that the male has to give dower to women in marriage. This should lead to the position where a female gets twice the portion of the male (*Iktivanus Safa*, nd Bombay 19).

It would thus be seen that the law of inheritance for women is not as iniquitous as it is made out to be. But wherever it tends to be iniquitous due to other factors it must be made to benefit the women as it is intended to be by the law-giver. The spirit of law is far more important than its letter. In feudal India Muslim women have been by and large deprived of their share in inheritance in the name of non-division of land. Even today the law goes by default when it comes to giving the share to women. One must ensure that it is strictly implemented.

Moreover, there is nothing in the Qur'an which might imply inferior status of women as a class. While the Qur'an exhorts women to be obedient to their husbands (such a requirement is rather contingent on prevalent social structure than a matter of principle as explained in another context above) and observe chastity it also requires men to be kind and just towards their wives and not to ill-treat them. And sexual waywardness is as much prohibited for them as for women.

There is no doubt that the medieval theologians interpreted the Qur'anic laws to suit the requirements of their male-dominated society and thus women came to be accorded inferior status. The 'ulama', we must understand, could not have gone out of their social context. But their interpretation should no longer be binding upon us, if our social context has changed. Recently the Government of Pakistan sought to change the law of evidence which raised a furious debate in Pakistan about the status of women. The change, needless to say, was neither in keeping with

the spirit of the Qur'an, nor was it justified in the social context. The women of Pakistan bravely fought against this change but lost.

According to the *Pakistan Times* the women's organisations contended that "the cases of rape are almost a common ugly feature in our society. This crime is never committed in the presence of four witnesses required for establishing the *Hadd* punishment. Instead, it is usually committed in a situation where no witnesses are available. In such cases if the evidence of the raped woman is not accepted, it will encourage the rapists to commit this crime again and again. In such cases," continues Rafiullah Shehab, "the majority of the Muslim jurists agree that the raped woman will not be subject to any *Hadd* punishment" (*Bidayat al-Mujtahid*, vol II, p. 317) "but they have not suggested the method to punish the criminal who commits this crime. If the raped woman is debarred from giving evidence in such cases of *Hudood* which practically ruins her life, then the rapist will never be punished."

There ■ six verses in the Qur'an wherein the necessity of evidence has been referred to — these ■ the five verses: 4:6, 4:15, 5:106, 24:4, 65:2 and the famous verse which pertains to calling witnesses for monetary transactions from which theologians have deduced their opinion that two women witnesses equal one man witness. The verse is as follows: "And call to witnesses from among your ■ two witnesses, but if there are not two men then one man and two women from among those whom you choose as witness, so that if one of the two is confused, the other may remember." Thus it would be seen that in the five verses referred to above no sexual segregation has been done for witnesses; it is only in the sixth verse quoted in full above that ■ and women have been separately mentioned. But in this verse too, it would be wrong to infer that two women witnesses have been equated with one male witness. The wordings of the verse clearly say that witness is to be given by one woman only; the other would remind if the first gets confused. And, it is to be noted that this arrangement is also restricted to financial matters only. Women in those days were not well versed in financial matters. In other verses on bearing witness pertaining to other matters women have not been separately mentioned. Witnesses could be from either sex.

In fact, when Hazrat 'Usman was murdered the only witness was his wife Na'ila and her witness was accepted by all the prominent companions of the Prophet. What is more important to note is that in the eighth verse of chapter 24 one woman's witness has been equated to four witnesses. The verse is as follows: "And it shall avert punishment from her if she bears witness before Allah four times that the thing he (her husband) said is indeed false, and a fifth (time) that the wrath of Allah be upon her if he speaks the truth." Thus we see that in certain circumstances even single woman's evidence on oath four times has been treated ■ perfectly valid. It would thus be wrong to generalise from one verse on financial transactions ignoring several other verses which do not make any such provision that the Qur'an requires two female witnesses as against one male witness.

Here we cannot go into other details pertaining to various laws of personal nature but suffice it to say that they need to be suitably reinterpreted in the context of our own requirements, keeping the basic spirit what is known as *hudud allah* in the Qur'anic parlance, in fact. Static law cannot meet the requirements of dynamic society.

### Notes and References

1. Ibid., 4-124.
2. One Quranic verse says: "Lo! men who surrender unto Allah and women who surrender, and men who believe and women who believe, and men who obey, and women who obey, and men who speak the truth, and women who speak the truth, and men who persevere (in righteousness) and ■ who persevere, and men who are humble and women who ■ humble, and ■ who give alms and women who give alms, and men who fast and women who fast, and men who guard their modesty and women who guard (their modesty), and men who remember Allah and women who remember Allah hath prepared for them forgiveness and ■ vast reward." The Qur'an 33:36.

## WHAT WAS THE ROLE OF MUSLIM WOMEN OUTSIDE HOME IN EARLY ISLAM?

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It has been maintained by the orthodox *'ulama* as well as conservative Muslims that women's role is strictly confined to home. Her primary duty is to look after her husband and children. She is not allowed to go outside her home except with the permission of her husband or father and she must be accompanied by a close male relative whom she cannot marry. This provision is strictly enforced in Saudi Arabia. It was also practised in Afghanistan under the rule of the Taliban. The Taliban went a step further and issued injunctions preventing even professional women like teachers, doctors, nurses, etc, from attending their jobs.

These are not Qur'anic requirements. The Qur'an neither prevents women from going out of their houses nor does it mention that they should be accompanied by a close male relative when venturing out of their houses. At best this prescription could have been enforced out of fear at some point of time to protect women from molestation. Thus it could be more ■ matter of precaution than of principle. On the other hand, the principle is that Qur'an equips women with the right to earn (4:32).

If it was required of women not to go alone out of fear of molestation, this requirement cannot be elevated to the status of principle ■ it has been done. If ■■■■ measure has been enforced in view of some immediate situation, it should be revoked as soon as it is over. Or, it should be made clear that it is essentially meant for protecting women and may not be insisted upon where no such fear exists. However, social traditions often become ■ matter of religious belief and soon acquire the status of principles.



Not only that, such restrictions imposed on women in view of certain situation were not relaxed but they became more stringent with the passage of time. Also, one does not find the concept of total obedience to husband in the Qur'an yet it became the prime virtue for a Muslim woman within a century after the death of the Prophet of Islam. Even the word *qanitat* (obedient women) in verse 4:34 implies, as many prominent Qur'anic commentators agree, obedience to Allah, not to husband, as required by some conservative 'ulama. It becomes clear if we take into account the use of that word in other verses like 33:31, 33:35 and 66:5.

Yet we ■■■ that obedience to husband became ■ must for Muslim women and the concept of this obedience became stricter and stricter. It became so rigid that according to a Persian author:

An ideal woman, speaks and laughs rarely and never without ■ reason. She never leaves the house, even to ■■ neighbours or her acquaintance. She has no women friends, gives her confidence to nobody, and her husband is her sole reliance. She takes nothing from anyone, except her husband and her parents. If she sees her relatives, she does not meddle with their affairs. She is not treacherous, and has no faults to hide, nor bad reasons to proffer. She does not try to entice people. If her husband shows his intention of performing the conjugal rites, she is agreeable to his desires and occasionally provokes them. She assists him always in his affairs, and is sparing in complaints and tears; she does not laugh ■■ rejoice when she sees her husband moody or sorrowful, but shares his troubles, and wheedles him into a good humour, till he is quite content again. She does not surrender herself to anybody but her husband, even if abstinence would kill her ... Such ■ woman is cherished by everyone. (See Shaykh Nefzawi, *The Persian Garden*, translated by Richard Burton, New York, 1964, p 97).

Thus one can gauge the deterioration in the status of women in Islam with the passage of time. But what was her status in early Islam, particularly during the Prophet's time and a few decades thereafter? Was she required to observe such restrictions? A close study of the relevant sources do not bear this out. On the other hand, we find a very different picture. It is ■ fact that Islamic revolution found among women, some of its most enthusiastic supporters. They supported the cause of Islam by migrating from their place of permanent residence to a stranger land even by risking their lives for it.

In the time of the Prophet women participated freely in the affairs of war, which is strictly a male-dominated field. Thus we find in *Sahih al-Bukhari*, one of the authentic collections of *ahadith* that Muslim women were actively helping the wounded in the battle of Uhud. These women included the Prophet's wives themselves. One man described seeing A'isha and another wife of the holy Prophet carrying water to men on the battlefield. Other women on the Muslim side are mentioned as caring for the injured and removing the dead and wounded from the field.

On the opposing side also women like Hind bint 'Utbah, wife of the Meccan leader Abu Sufyan, led some fourteen or fifteen women of the Meccan aristocracy onto the battlefield, playing out the women's traditional *jahilliyah* role in singing war songs and playing tambourines. The women during *jahilliyah*, specially of Meccan tribes, did participate in the battlefield and sang war-poetry called *rajaz* to incite their menfolk to fight with greater verve and bravery. This practice was not discontinued by Islam and permitted women to actively help the combatants by dressing their wounds and meeting their other requirements.

As rightly pointed out by Leila Ahmed veiling was not introduced by the Prophet of Islam. It was essentially a non-Arab practice prevalent in those areas dominated by Roman and Persian empires. She says:

Veiling was apparently not introduced into Arabia by Muhammad but already existed among certain classes, particularly in the towns, though it was probably more prevalent in the countries that the Arabs had contact with, such as Syria and Palestine. In those areas, as in Arabia, it was connected with social status, as was its use among Greeks, Romans, Jews, and Assyrians, all of whom practised veiling to some degree. It is nowhere explicitly prescribed in the Qur'an; the only verses dealing with women's clothing... instruct women to guard their private parts and throw a scarf over their bosoms (*Sura 24:31-32*) (See *Women and Gender in Islam*, Yale University Press, 1992, p 55).

Leila also points out, "Throughout Muhammad's lifetime veiling, like seclusion, was observed only by his wives. Moreover, that the phrase '[she] took the veil' is used in the *hadith* to mean that a woman became a wife of Muhammad's suggests that for some time after Muhammad's death, when the material incorporated into the *hadith* was circulated, veiling and seclusion were still considered particular to Muhammad's wives. It is not known how the customs spread to the rest of the community. The

Muslim conquests of areas in which veiling was commonplace among the upper classes, the influx of wealth, the resultant raised status of Arabs, and Muhammad's wives being taken as models probably combined to bring about their general adoption." (Ibid, pp 55-56)

Thus we see that a gradual change came about in the status of Muslim women and then this change was incorporated in subsequent periods into the *shari'ah* laws by the legal doctors (*fugaha'*). It then became prohibited for women to venture out of home without a veil and unaccompanied by a close male relative. But we find accounts of many women during and after the lifetime of the holy Prophet who not only did not observe the formal veil but also participated in wars along with men. We find accounts of these women in early sources of Islam like *Fath-i-Khaibar* by Abu Dawud, *Tarikh-e-Tabari*, *Usad al-Ghaba* of Ibn al-Athir, *Futuh al-Buldan* of Baladhuri and of course in the authentic collection of *hadith* like *Sahih Bukhari* and *Sahih Muslim*. We will throw light here on some of these women who bravely fought along with other Muslim men in these battles.

Participation of Muslim women in wars was not something entirely a novel concept, as pointed out above. Syed Sulaiman Nadvi, a noted Islamic scholar from India, writes in his *Heroic Deeds of Muslim Women*, "The history of Islam also abounds in scores of such gallant actions on the part of Muslim women, but, unfortunately, they are not commonly known. Prior to Islam, the Arab women used to accompany men to the battle-field. With their children, they remained behind the fighting lines and looked after the wounded soldiers, attended the horses, comforted their valiant husbands, roused their spirit by narrating the thrilling achievements of their ancestors, disarmed the dead soldiers of the enemy, rallied the panic-stricken fugitives, and guarded the prisoners."

Then Sulaiman Nadvi goes on to quote the verses of the famous poet of Arabia 'Umar bin Kulthum who writes:

Behind our ranks are beautiful and white-faced women; we are always afraid lest they should be insulted, and enemy take possession of them. These women have taken oaths from their husbands to show gallantry in the field of battle. They accompany us, so that they may take possession of, and arrest, the enemies'

horses and armaments. These are the ladies of the family of Jashm b. Bakr, who not only possess beauty, but also have traditions both of family and religion. They look after our horses and they say, 'If you cannot protect us from the enemy you are not our husbands.'

Then the Syed observes,

Islam also maintained this tradition. Women always followed men in the *jihad*. In the battle of Uhud, according to Bukhari, 'Ayesha (may God be pleased with her) carried a leather bag full of water to quench the thirst of wounded soldiers. She was helped in the task by Umm Salim and Umm Salit. (*Heroic Deeds of Muslim Women*, Islamabad, 1990, pp 2-3).

We read in *Fath-i-Khaibar* of Abu Dawud that the traditionalist (*muhaddith*) Abu Na'im narrates that in the battle of Khaibar, half a dozen women of Medina followed the Muslim army. The Messenger of Allah did not know this and when he was informed he was angry and said — why have they come at all? These women replied that they were carrying medicines and they would nurse and dress the wounded, take out arrows from the bodies of the soldiers, and arrange for their rations. Hearing this the Prophet allowed them to accompany the army, and, when Khaibar was conquered, he gave share of the war booty to these women also (Quoted from *Heroic Deeds of Muslim Women*, op cit, p 3).

In Bukhari we find a sub-section on "Women's participation in jihad along with men". He narrates in this section some of the *hadith* which clearly shows that women participated in the battles along with men. In Bukhari we find a *hadith* from A'isha, the Prophet's wife, that she accompanied the Prophet in a battle and this was after the revelation of the verse about veil (See *Sahih Bukhari*, vol II, "*Kitab al-Jihad wa al-Siyar*", its section ■ "Women's Participation in Jihad along with men", Lahore, 1979, p 87).

We also find in Bukhari a *hadith* that in Uhud when some people deserted the Prophet, A'isha and Umm Salim had rolled up their lower clothes revealing their anklets and carrying waterbags on their backs and were pouring water into the mouths of the people. When water was exhausted they went back and filled the bags and again poured water into the mouths of the (wounded) people. Similarly in *Sahih Bukhari* we find a number of other *hadith* to this effect (See 110:144, 111:145 and 112:146. Also in

*Bukhari "Kitab al-Tib"* we see a *hadith* that Rabi, daughter of Muaz, performed the duty of carrying martyrs and the wounded from the battlefield of Uhud to Medina along with other women. Also, we find in Abu Dawud, vol I that Umm Raqida had a pavilion for the wounded, where she washed and dressed their wounds.

In *Sahih Muslim* too we find in the section on *Jihad*, a subsection on "Participation of women in *jihad* along with men" in which he includes many *hadith* on participation of women in battle-related services like bringing water for the thirsty, nursing the wounded, etc. In *Sahih Muslim* we also find a *hadith* (see vol V, p 104, Deoband, nd) according to which Umm Salim carried a knife. When the Prophet inquired as to why she was carrying it she replied in order to rip open the stomach of enemies. The Prophet smiled at that. We also find this incident narrated by Tabari in his *Tarikh*, vol I, p 415 Urdu tr (Deoband, 1982). We also learn from Tabari that Umm Attiyah cooked for the warriors in seven battles.

Imam Nuwavi concludes from these *ahadith* that it is permissible for women to go out for participation in wars. She can render services like providing drinking water, tending to the wounded, etc. She can attend to any men and not only her husband.

We also read in *Tarikh-e-Tabari* that in the battle of Qadisiyah a woman who was present therein says, "When the battle was over, we (women) rushed forward daringly to the battlefield with rods in our hands and picked up the wounded Muslim soldiers." (See Syed Sulaiman Nadvi, op cit, p 4).

It is not that the women only performed some services behind the battlefront but there are also many instances of their taking part in actual fighting or attacking the enemy. We find in *Usd al-Ghabali* of Ibn Athir the incident pertaining to the battle of Khandaq (Trench). Safiah, the Prophet's aunt, was present in this battle. There were many women and children surrounded by the Banu Quraizah, the Jewish tribe. And there were no soldiers to protect them. A Jew of this tribe chanced to appear near these women and children. There was apprehension that this Jew might betray the presence of these women and children and the Banu Quraizah might then kill them all. So Safiah asked Hassan bin Thabit to kill the Jew. However, he hesitated. Thereupon Safiah herself came out from the fort and took a pole from the tent and

killed the Jew. She was the first brave Muslim woman to have shown so much courage (see Ibn Athir, vol V, Beirut, n d).

In *Usad al-Ghabah* we also read about Umm Ammarah who, in the battle of Uhud, when many male companions ran away, she protected the Prophet with a sword. She sustained that day many injuries on her hands and arms. And it was not her last battle. She took part in other battles ■ well and showed her acts of bravery (see vol V, *ibid*). Umm Ammarah was also present in the battle against the false prophet Musailamah during the reign of the first caliph Abu Bakr. She was seriously wounded in this battle and sustained twelve injuries.

Syed Sulaiman Nadvi cites one very interesting incident from Tabari in which the Muslim women devised tactics to defeat the powerful enemy. This is what he says:

The women exhibited still more wonderful tactics in the battle of Maisan on the banks of the Tigris. Mughira, who was the commander of the Muslim army, had left the women far behind. The two contesting armies were fighting frantically, when Ardah, the daughter of Harith and the granddaughter of Kaldah, the physician of Arabia, planned with her comrades to help the Muslims at this juncture. She made a long banner of her apron, and the rest of the women made similar banners of theirs. The two forces were fighting desperately when these women marched towards the Muslim army with their banners afloat in the air. The enemy thought it to be a fresh reinforcement of the Muslims and, thus discouraged, made an abrupt retreat (see Nadvi, *op cit*, p 9 who cites it from Tabari, vol IV, p 2347).

Gibbon has narrated in his book *The History of the Decline and Fall of the Roman Empire*, Chapter II, pp 42-43 the incident of Ajnadain, where the Muslims were surrounded by 90,000 Romans. All Muslim forces numbering 24,000 marched towards this place. While the Muslim army was engaged with the enemy on the front, the people of Damascus captured the Muslim women and hastened to the fortress with them. The women too were surprised and Khaula, daughter of Azdar spoke passionately, addressing other women: "Sisters! do you agree to surrender to the infidels of Damascus? Will you disgrace the dignified skirts of the Arabian chivalry and glory? Let us die rather than submit to this disgrace."

These few words, according to Sulaiman Nadvi, set the senses and pride of the Arabian women ablaze, and, holding tent-poles in

their hands, they rose to stand firm. To live honourably or to die was the question. Khaula, the daughter of Azdar, was in the lead, and behind her filed Afira, the daughter of Afara, Umm Aban, the daughter of Atba, and Salmah, the daughter of Nu'man, and others. The men of Damascus looked on amazed as the Muslim women killed thirty of them. They made desperate assaults in return but failed to hold their ground. The Muslims had by this time routed the enemy and ■■■■ to the rescue of their women. (See Sulaiman Nadvi, op cit, p 10).

The battle of Yarmuk whose account we find in Tabari also shows the role played by Muslim women in times of crisis. There were 40,000 Muslims as against 200,000 Romans. They fell upon Muslims with great fury. The Muslims did not know what to do and some of them in the left wing began to flee. Pursuing the fleeing Muslim soldiers the Romans reached the camp of the Muslim women. These women emerged from their camp and offered solid resistance. They fought with such ferocity that now the Romans took to flight. The women of the Quraish flung forward with swords flashing in their hands, rushing into the battle lines. Ibn Athir says that Asma bin Yazid killed nine Roman soldiers single-handedly with the pole of her tent (see *Usad al-Ghaba*, vol V, op cit p 398).

Again in *Usad al-Ghaba* we read the account of Umm Hakim who killed seven Roman soldiers herself with the pole of her tent near a bridge which is now known as the Bridge of Umm Hakim near Damascus (see vol V, p 577). Also Baladhuri, in his *Futuh al-Buldan* quotes Waqidi to the effect that women played an important role in the conquest of Syria and specially mentions the names of Umm Hakim, Umm Ammarah, Khaula, Lubna and Afira.

Syed Sulaiman Nadvi also tells us that during the invasion of Damascus, when Aban b.Sa'id was martyred by Tuma, the governor of Damascus, his wife, Umm Aban, the daughter of Atba, set out with all the weapons of her murdered husband to take revenge. She fought heroically with the enemy for long. The people of Damascus, though besieged in the fortress, retaliated from the ramparts of the fortress. At the head of them a holy man was praying for victory with the Golden Cross in his hand. Umm Aban, being an expert archer, aimed accurately at the Cross knocking it out of the man's hand. ■ flew with the arrow beyond



the ramparts of the fortress and dropped in the midst of the Muslims. The Christians could not tolerate this and Tuma, with eyes aflame and lips frothing, rushed out of the fortress, and a battle, violent and impetuous, ensued. The Romans fought stubbornly to recover the Cross, but it was of little avail. Whoever turned towards it was a victim of Aban's fatal arrows. Tuma was adamant but he even retired posthaste when Umm Aban's arrow plunged directly into the corner of his eyes. Umm Aban was reciting the following lines: 'Umm Aban! You take your revenge, and make an incessant invasion upon them; the Romans have been agonised by your arrows' (*Heroic Deeds of Muslim Women*, op cit pp 12-13).

We read in *Iqd al-Farid* (Beirut, nd vol I, pp 21-24) that a large number of Muslim women had accompanied Ali to the battle of Siffin. These women not only fought but also cheered their menfolk and inspired soldiers with their spirited speeches. Many women like Zarka', Umm Khair, etc, kindled fire through their inspiring speeches and these soldiers fought with much more vigour.

The name of Ghazala, a Kharijite woman, is also worth mentioning in this connection. Leila Ahmad observes:

With women warriors, the Kharijites argued that, in this case, the practice was legitimate and indeed a religious requirement for women, because women had accompanied Muhammad on his military expeditions and fought in his battles. In fact, a number of Khariji women won renown for their prowess in battle, among them was Ghazala, who defeated al-Hajjaj in a duel. The orthodox, who opposed *jihad* for women, killed and exposed the women captured in their battles with the Kharijis -- this conduct suggesting an attitude toward women on the battlefield far different from that of the first Muslim community. The strategy was effective in leading Khariji women eventually to withdrawing from the theatre of war. The early Kharijis were mostly Arab, distinct from *mawlas* (converts from among the conquered peoples attached to Arab tribal leaders as 'clients') or Arabs intermingled with *mawlas*; this perhaps was a reason that the Arab tradition of women in battle endured longer among them than among orthodox Muslims who, following the conquests, rapidly assimilated with non-Arabs. (See *Women and Gender in Islam*, op cit, pp 71-72).

We have referred to the battle of Uhud above and some women's participation in it. What is interesting to note is that in this important battle women participated from both sides, ie, from

the side of the enemies of Islam and from the side of Muslims as well. Hind bint 'Utbah was most prominent from the side of the opponents of Muslims. 'Umar bin Khattab was greatly incensed by the conduct of Hind who was inciting the *Kuffars* (unbelievers) of Mecca.

On the other side, that is, on the side of the Muslims was Umm 'Umara along with her husband and sons. Her courage and her effectiveness with weapons led the holy Prophet to observe that she had acquitted herself better than many men. Umm 'Umara continued to fight in other battles during the lifetime of the Prophet and after him until she lost her hand in the battle of 'Uqraba in 634 A H Hind, who was on the side of the opponents of the Prophet in the battle of Uhud, embraced Islam later and participated in the battle of Yarmuk and played the ~~important~~ role of reciting *rajaz* (war-poems) to inspire Muslims to fight and strike the enemies with swords. Another poetess al-Khansa' whose weapons were her words was present in the battle of Qadisiyyah. She incited Muslim soldiers to fight with full vigour and not to retreat.

For Kharijis it was quite normal that women take part in wars as a religious duty, along with prayer, pilgrimage, fasting and alms-giving. In other Islamic sects *jihad* is not obligatory for women, for Kharijis it was. It is also interesting to note that the Kharijis and Qaramita had banned child marriage, cohabitation with slave-girls (*milk-e-yamin*) and the Qaramita had banned polygamy as well. The Qaramita also abolished the veil. They argued that the spiritual has precedence over the biological. They rejected the argument that the Prophet had married A'isha at the age of nine by saying that it was a special privilege allowed only to the Prophet.

The participation of women in battles was not confined to Arab women only. There are some instances from India too. Muslim women belonging to ruling dynasties showed their skills in the battlefields. One such name is of Gul Bahisht, a slave-girl of Alauddin Khalji. She led an army against the Raja of Jalore called Kanir Deo. The Raja had bragged in Alauddin's court that no one could defeat him. Alauddin, though kept quiet for few days, sent his army led by Gul Bahisht. She surrounded the fort of Jalore and fought with great bravery against the Raja's army. But when her victory was about to materialise, she fell ill and died. The fort was later on conquered by Kamaluddin, one of the Alauddin's general (see *Tarikh-e-Farishtah*, Deoband, India, 1983, vol I pp 385-86).

The case of Nurjahan is of course well-known. We find in *Tuzk-i-Jahangiri* the description of her hunting exploits. She used to mount elephants and kill lions. Jahangir writes that once he was accompanied by Nurjahan on a hunting expedition. A lion emerged from a bush. Seeing the lion the elephant lost its equipoise and with a frightened animal it was difficult to shoot the arrow precisely at the lion. Rustam Khan who was an expert archer also failed in the situation. At last Nurjahan shot the lion dead with her arrow.

Very little is known of the Ponchi Khatun of Adilshahi dynasty. She fought against her enemies who wanted to usurp the Adilshahi throne with a handful of soldiers and won. She was not only a brave fighter but also a very clever strategist. It was because of her strategies that they could win an otherwise hopeless battle which she had nearly lost. We find detailed account of Ponchi Khatun's fight with her opponents in *Tarikh-e-Farishta* (op cit, vol II, pp 121-123).

Chand Khatun's bravery is also wellknown. She belonged to Ahmadnagar and defended her kingdom as any man would do. She challenged the might of Akbar's army with the help of Adil Shah's cavalry. Qutubshah also helped her with 6,000 soldiers. "The Mughals and Rajputs advanced boldly," writes Nadvi, "but failed to gain a single inch of the fortress. Chand Khatun fought gallantly with her soldiers and the ditches outside were filled with the dead bodies of the Mughal and Rajput soldiers ... Chand Khatun met with a chorus of applause both from her friends and foes for her vigilance and enterprise. Thenceforth she was called Chand Sultana" (ibid p 27).

Thus we see that many Muslim women took part in wars and some of them were rulers as well. It is not true that they always observed the veil and stayed at home. In fact, the veil, as we have shown elsewhere, is not a Qur'anic concept. Its use belongs to a much later period. Though it was sought to be given Islamic legitimacy by the conservative 'ulama it never had any Islamic justification. Right from the holy Prophet's days women had been playing an important role in public life. The Prophet and later on his companions never sought to prevent them from doing so. However, it was the alien and non-Islamic influences which promoted restrictions on the public role of women in Islam.

## ISLAM AND GENDER EQUALITY

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The question of sexual equality is a very important parameter of modernity along with democracy and human rights. Whatever be the status of women in the Qur'an, status of women in Muslim societies is far from satisfactory. Be it in India, Pakistan, Bangladesh or any other Muslim country in West or South East Asia, like Malaysia and Indonesia. In all these countries the problem of women's status has acquired critical proportions. Many women's organisations have sprung up in these countries and are struggling for their rights. The problem is acquiring more and more serious proportions ■■ modern education is spreading among middle class women.

Earlier the orthodox in the community were strongly opposed to education for women. Even today in rural areas and smaller towns, education for girl child is frowned upon. Nevertheless in bigger towns and among growing middle classes it is no more possible to stop women from acquiring education and hence proportion of educated women is increasing. With the increased percentage of education among women, awareness for their rights is also increasing. They increasingly demand equal status with men. Some women tend to become indifferent to religion and even consider religion as serious obstacle in their right to equality.

The orthodox among Muslims too, on their part, show stiff resistance to any change and want to maintain status quo. They, of course, quote from the Qur'an and *Hadith* and also from opinions expressed by the Islamic jurists, to prove their case. This further strengthens impression among these women that Islam is not going to help them and they begin to reject it.

However, there are also women who are determined to use religion in their favour and for fighting their battle against the male understanding of the divine scripture. They believe in

women reading and understanding the Qur'an. Thus there are various women's organisations doing this exercise and re-interpreting the Qur'an. It is a better sign and I believe, ■ more healthy sign. Women have as much right to understand and interpret the Qur'an from their perspective. Even the most orthodox among the Muslims would agree that women have also right to interpret the Qur'an.

### Sexual Equality and the Qur'an

The important question is whether the Qur'an accords equality to women or gives women an inferior position. According to conservative view, women have an inferior position and the 'ulama quote the Qur'anic verses in their support as well as *ahadith* and opinion of the *fugahia'* (Islamic jurists) in their favour. But this also raises ■ important question, which we must deal with.

Would sexual inequality prevalent in the past in the Muslim societies be binding on the modern generations too? Or to ask the same question in reverse, ie can we be justified in projecting our modern values in the past? Should we expect that past generations follow our norms of sexual equality? Obviously, this would be an unfair position and so it would be equally unfair to expect that we blindly imitate the past generations and their leaders' opinion. We have to evolve our own norms and values. But many of us do not accept changes in norms and values and consider it against Divine Will.

One also has to throw some light ■ the question of legal philosophy in Islam. The Islamic law is considered of divine origin and hence immutable. The time is not supposed to have any influence and external changes either have to be rejected or so moulded as to be acceptable to the immutable divine law. However, there have been ■ alternate point of view too inherited from past. Imam Shatibi of fourteenth century Spain whose theory of Islamic law takes into account what he calls *maqasid al-Shari'ah* (ie purposes of Shari'ah) and *masalih of umma* (ie good of the community).

According to this alternate view it is *maqasid* (purposes) for which law has been framed, matters that law *per se* and keeping in view the *maqasid* changes can be affected to achieve these purposes and the good or welfare of the community should always be kept in view. One cannot sacrifice the purpose or the

welfare of the community for the sake of law. Thus this alternate theory is more dynamic and change-oriented. But it was a minority view in the Islamic world.

But today there is more acceptability to this viewpoint. In fact Shari'ah was never meant to be static as it is assumed by many of us today. Shari'ah law was most dynamic and reflected needs of the time. The different jurists living in different places and in different circumstances adopted different views and they differed from each other on many issues. The eighteenth century Islamic thinker from Indian subcontinent Shah Waliyullah also argues in his magnum opus *Hujjat Allah al-Balighah* that the Shari'ah is devised in keeping with the nature of the people and needs of the time. He devotes an entire chapter of his book to develop this argument. He even gives an example of how *al-ikam* (legal injunctions) change with circumstances.

The example given by him is quite interesting and pertains to law of inheritance. When the Prophet (PBUH) migrated from Mecca to Madina, his blood relations were left behind and he established what is called *muwakhlat* (mutual brotherhood) and the Qur'anic verse about inheritance was revealed. However, when those left behind in Mecca came back and joined their families and Islam flourished, the verse – making inheritance a right of close blood relatives was revealed – cancelling the earlier one. Thus with the change of circumstances the *hukm* (religious injunction) also changed.

Thus Shah Waliyullah had this insight that Shar'i *al-ikam* reflect social situations as far as *mu'amalat* (inter-personal and social) issues are concerned. The great Imams after whom Shari'ah schools are known are also categorised according to their social role. Thus Imam Malik was conservative and has been called as *imam al-muhafizin* (imam of those who wanted to preserve as much as he could). Imam Abu Hanifa, on the other hand, was more liberal and open and has been referred to as *imam al-mujaddidin* (the leader of modernists) and Imam Shafi'i was moderate and has been called *imam al-wast wa i'tidal* (ie leader of moderates). Imam Hanbal who was much more rigid has been described as *imam al-mutashaddidin* (ie leader of those who take extreme positions). In Saudi Arabia it is Imam Hanbal who is followed generally. This categorisation also shows that there were significant differences among the Islamic jurists and some among them were open and

liberal and some quite rigid and unyielding. Changing social situations did influence thinking of eminent jurists like Imam Abu Hanifa and Imam Shafi'i.

The situation today has changed greatly and re-thinking on many issues like man-woman relations is highly necessary. Even the Qur'an, as pointed out by Shah Waliyullah and other Islamic 'ulama, did respond to social situations and some verses revealed earlier were cancelled later with the changing situations. The debate about *nasikh* (verse which cancelled) and *mansukh* (verse which was cancelled) rages even today. It is an important chapter of the Qur'anic 'ulum (ie Qur'anic sciences).

Thus on man-woman relations also we find different verses which are selectively quoted by anti-equality and pro-equality of sexes. These verses were revealed in response to different situations and hence the differing stances in these verses. Some verses make certain contextual concessions in favour of man and some lay down norms for long time to come. The Qur'an, it is important to note, does not confine to given situation or status quo (though has to make certain concessions to it) but basically wants to transcend the given situation. The most important characteristic of the Qur'an is its transcendence and anti status quo spirit.

Before the Qur'anic revelation, woman's situation was far from satisfactory. She was not only unequal but subordinate to man in every respect though between Mecca and Madina there were significant differences also. Meccan society was highly patriarchal in ethos and Madinese society was perhaps matriarchal in distant past and its traces survived until the rise of Islam.

Without this social background we cannot appreciate the changes Qur'an effected in Arab women's life at the time. However, the Arab men were not easily reconciled to these significant changes in women's status. We will throw some light on the kinds of debates which took place on man-woman question at the time. Islamic revolution had brought lot of awareness among women of the time ■ modern democratic society has brought so much awareness among Muslim women today.

There are two significant verses in the Qur'an which reflect debate on men-women relationship ■ Madinese Islam. In Meccan verses we do not find these debates, ■ Muslims were too weak to think of these issues there. It was only in Madina that when



Muslims began to acquire dominant position that these gender issues came to the fore. Women were far more aware of their rights after becoming Muslims and they posed questions to the Prophet (PBUH) about their status in response to which these verses were revealed.

Of these verses the two significant verses are 4:34 and 33:35. Both these verses make statements on men-women relations, which appear to be quite different. The modern scholars are keenly debating these verses. While 4:34 is often quoted by the orthodox to prove their point, there is controversy about 33:35 about its real status on sexual equality. Again the orthodox 'ulama maintain that it is all about spiritual equality. Is it? It needs some discussion.

First let's discuss the verse 4:34 which is frequently quoted for Qur'anic position on sexual equality. The verse is translated as under by Maulana Mohammad Ali of Lahore:

Men are maintainers of women, with what Allah has made some of them to excel others and with what they spend out of their wealth. So the good women are obedient, guarding the unseen as Allah has guarded. And (as to) those on whose part you fear desertion, admonish them, and leave them alone in the beds and chastise them. So if they obey you, seek not a way against them....

The same verse is translated by Muhammad Asad as follows:

Men shall take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter, and with what they may spend out of their possessions. And the righteous women ■■■ the truly devout ones, who guard the intimacy which God has (ordained to be) guarded. And for those women whose ill will you have reason to fear, admonish them (first); then leave them alone in bed; and then beat them; and if thereupon they pay you heed, do not seek to harm them...

However, Ahmed Ali in his *Al-Quran* differs from both Maulana Mohammad Ali and Muhammad Asad in translating the word '*wa'dribuhunna*'. Mulana Mohammad Ali and Muhammad Asad translate it as 'admonish then' and 'beat them' respectively. But Ahmed Ali translates it as 'go to bed with them' and cites Raghīb's *Mufrīdat fi Ghārīb al-Qur'ān*, *Lisan al-Arab*, and *Zamakhshari*. '*Daraba 'ala*', according to Raghīb is said for he-camel mounting over she-camel and thus Ahmed Ali translates it as 'going to bed' rather than beating the wife.

Thus we see there are significant differences in translation of this controversial verse. There are few key words in this verse 'qawwam', 'qanitat', 'nushuz' and 'wa'dribuhunna'. The understanding of the verse very much depends on understanding these words properly. 'Qawwam' traditionally has been translated as 'ruler', 'authority over women' etc. However, modernists and women rights activists are challenging this meaning. Maulana Mohammad Ali translates it as 'maintainer', Mohammad Asad as 'to take full care of' and Ahmed Ali as 'guardians'.

Thus 'qawwam' should not mean ruler or an authority but one who takes care of or maintains wife or acts as guardian. It is thus not a statement of superiority of man over woman but an economic function. And it should also be noted that woman can also perform this function (and she does in our times) and hence she can also be 'qawwam' as per the Qur'an. Thus this verse cannot be understood properly unless we properly understand these key words.

Another key word is 'qanitat' which is generally translated as 'obedient' and implying thereby 'obedient to husband'. But that is also problematic. 'Qanitat' means 'devoted to' or 'obedient to God' and not to husband. Then another important word is 'nushuz' which literally means 'rebellion' which has been rendered as 'ill will' by Muhammad Asad and Maulana Mohammad Ali as 'desertion' by wife and Ahmed Ali as being 'averse' towards husband. However, 'nushuz' as such applies to both husband as well as wife. The modern legal term for it is 'mental cruelty' and with respect to husband it also means 'ill-treatment' of wife in physical sense and we find mention of ill treatment of wife by husband (nushuz) in verse 4:128. Thus it clearly shows nushuz is applied to both husband as well as wife. And another key word 'wa'dribuhunna' has already been explained. The word *daraba* has several meanings in Arabic language and here, as pointed out by Raghīb himself could mean sexual intercourse with wife rather than beating or chastising the wife. Thus Ahmed Ali comes much closer to the meaning of the verse.

It is important to note that the Prophet (PBUH) has also strongly disapproved of beating one's wife. We find a hadith in authentic collections, which is as follows: "Could any of you beat your wife as he would a slave, and then lie with her in the evening?" And according to hadith in Abu Da'ud, Nasa'i, Ibn

Majah, Ahmad bin Hanbal and others "Never beat God's handmaidens" ie he forbade to beat any woman.

In fact the above verse under discussion was revealed in response to a situation which has been described by Zamakhshari in his *Kasshaf*. This verse shows that there was practice of wife beating specially among the Arabs of Meccan origin. According to Zamakhshari, Habiba bint Zaid complained to the Messenger of Allah that her husband Sa'd bin Rabi' slapped her. The Prophet told her to 'retaliate'. But this caused serious problem among men as they would not accept retaliation from their wives and hence they complained to the prophet and then this verse (4:34) was revealed.

However, it caused stir among women of Madina. They were disturbed and approached the Prophet and wanted to know their real status vis-a-vis men and then the verse 33:35 was revealed. The verse is quite important one as regards women's status and is translated by Maulana Muhammad Ali as under:

Surely the men who submit and women who submit, and the believing men and the believing women, and the obeying men and the obeying women, and the truthful men and the truthful women, and the patient men and the patient women, and the humble men and the humble women, and the charitable men and the charitable women, and the fasting men and the fasting women, and the men who guard their chastity and the women who guard, and the men who remember Allah and women who remember Allah has prepared for them forgiveness and mighty reward.

This verse is an important statement of equality of men and women. It mentions ten times men and women being equal in all respects and their reward will also be equal. It is not merely in spiritual terms as some would like to believe as the verse mentions being truthful, guarding one's chastity and being humble and patient too. Thus men are no superiors to women in any respect, spiritual or material. This statement is being made when even Greek philosophers were discussing whether women have soul or not. The Qur'an, on the other hand declares that men and women both will be forgiven and would be given great reward in equal measure. There are other verses in the Qur'an which declare equality of men and women. The verse, 2:228 for example, is one among them. This verse says, "...in accordance with justice, the rights of the wives (with regard to their husbands) are equal to

(the husbands') rights with regard to them, although men have precedence over them."

Maulana Abul Kalam Azad, commenting on this verse says that the Qur'an through these four words (*lahunna mithlul ladhi 'alayhinna*) has made revolutionary declaration of equality of men and women. According to him these four words have given women all that was their right but they had never got. These four words lifted women from the dust of deprivation and humility and made her sit on the throne of dignity and equality.

He also explains the words "and the men are a degree above women" by saying that they were earning and feeding them (the verse 4:35) and the Maulana, it is interesting to note, also clarifies that men do not get any distinction by birth over women. If women earn and run the family, women would also have this distinction of being a degree above men. Thus the statement of Qur'an "men are a degree above (women)" is functional and not biological, in any way.

The meaning of the scripture reveals itself differently in different cultures and social conditions. Our jurists and the 'ulama could not have understood the meaning in their social and economic environment which we can understand today. Thus the interpretation of the Qur'an should not be static leading to freezing of Qur'an's meaning in one particular age. While we should not fault the interpretations of eminent jurists and 'ulama of earlier periods, we should not surrender our own right to understand and interpret the Qur'an under our own circumstances.

Thus our struggle is against the status quoist approach to the Qur'an and it is our duty to develop a new hermeneutics of the Qur'an which takes into account the economic and social needs and functions of our own times. Women are playing very vital role in our society and have even become economic leaders and managers. Thus the old hermeneutics cannot take us very far today.

When women were so aware of their rights in the time of the Prophet and were active on religious and social fronts, how can they remain passive today and accept the role assigned to them by the orthodox 'ulama who refuse to take into account the new socio-economic dynamics? It has always been a human endeavour to understand divine intentions as sincerely as one could. If our forefathers did it we can also do it today with same sincerity but different understanding mediated by our socio-economic needs.

## WESTERN FEMINISM OR RIGHTS OF WOMEN IN ISLAM

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There is strong criticism of those who work for rights of women by conservative Islamists and they are accused of imitating Western feminism. It is debatable whether it is so but even if it is what is wrong with it? Western feminism is based on secular ideology but upholds dignity of women and their rights. If secularism is not always negation of religion (only atheistic secularism negates it, not other forms of secularism) and in most cases it is not, there is no objection to feminism. The Holy Prophet says acquire wisdom (*hikmah*) wherever it is found as it is believer's (*mu'min's*) property.

It is well known that until sixties even Western societies – despite their secularism – had not accorded equal rights (sexual equality is still not meticulously practised in Western societies) to women. In fact even right to inheritance and property was given to women in Western countries in thirties. In some countries women got right to vote only during the decade of thirties. The women had to struggle, a lot in the West for acquiring these rights, which Islam had given to them centuries ago.

Even in Western countries many issues are debated and many women's organisations are not fully satisfied about the women issues. Man's domination continues in most of the spheres including the domestic sphere. Man certainly enjoys more privileges, if not rights, in those Western countries. Man still resists performing domestic chores and even wife beating is not unknown.

The fact is that patriarchal structure of society is still going strong and one does not know whether it will disappear in the foreseeable future. It is for this reason that with few exceptions political power rests with man in most of the countries. Again, in

most of the western countries representation of women in legislative bodies hardly exceeds ten per cent though their population is close to fifty per cent in all societies. It is for this reason that the feminists ■■ struggling for equal rights in Western countries too. All one can say is that the condition of women in Western countries is somewhat better compared to third world countries or Islamic countries. Though in Western countries equality of sexes has been established theoretically it is far from having been achieved in practice.

And those struggling for women's rights in third world countries in general and, in the Islamic countries in particular, have to struggle against much greater odds. These odds remain insurmountable even if these women work within the framework of Islam. Many Muslim countries like Kuwait still refuses to give its women right to vote. The Saudi government does not allow its women to drive even when accompanied by their husbands, let alone go out alone in public.

We have such primitive conditions in several Islamic countries and if women protest against such intolerable restrictions they are dubbed as 'Western feminists'. The real thing is that such demands of equal rights hurt male ego. Male domination is not at all Islamic, though it is justified in its name. Men use some selective verses from the Qur'an, ignore their social context and use them to perpetuate their domination. They conveniently ignore the verses empowering women or laying down equality of both the sexes. In fact in verses like 2:219, 2:228 and 33:35 there is clear statement about equality of both the sexes and yet they are totally ignored and instead they quote verses like 4:34 to establish their domination. They even distort the meaning of words like *qawwam* used in above verse to retain their hegemony.

They also use several *ahadith* (Prophet's sayings) to put undue restrictions on women. It is forgotten that thousands of *ahadith* cannot be even authenticated as many of them were forged by those who had anti-women attitude and these *ahadith* are used as authentic source for legislation about women even when they contradict clear Qur'anic assertions. Thus the Saudi law not allowing women to venture out alone is not Qur'anic but based on ■ *hadith* which prohibits women going out alone.

Even if the *hadith* is authentic one totally ignores the social conditions then and now. In those days there was conflict between the Jews and Muslims and the Jews used to tease Muslim women and so in view of this the Prophet might have cautioned women not to venture out alone. Most of the *ahadith* are narrated without mentioning any context or reason and these are followed by the orthodox 'ulama mechanically. And practices like prohibiting to drive does not even have any base in *hadith*. There were no automobiles in those days.

One cannot even derive it by inference or *qiyas* (analogy) as women were not prohibited by the Holy Prophet from riding camels or horses. The women did ride camels and horses and they even drove them by themselves. Such prohibition is nothing more than extreme conservatism of the Saudi 'ulama and their stubborn refusal to concede rights to women. It is interesting to note that while the Saudi government does not allow women to drive cars, the Iranian government has started exclusive taxi service to be run by women. Thus Iranian women can not only drive private cars but can also be a taxi driver.

Similarly while the Kuwait government refuses its women to vote other Muslim countries like Pakistan, Bangladesh, Egypt and other countries allow them to vote. How does one explain these contradictory practices? Are there different Islams or are there differing attitudes towards women? Thus it is not Islamic sources but men's attitude which matters.

And when Muslim women demand their rights – and Islamic rights at that – they are denounced as Western feminists. It is a fact that Muslim women enjoy differing degree of rights in different Islamic countries. While in Turkey Mustafa Kemal Pasha introduced secular Swiss code thus according equal rights to both men and women on one hand, and, the total restrictions in Saudi on the other hand. In other Muslim countries like Egypt, Morocco, Algeria, Jordan, etc, there is comparatively greater latitude of freedom for women. It is because the rulers in these countries are more liberal towards women.

Thus it is not Islam, which comes in the way but man's attitude which determine the laws of Muslim countries regarding women. But these men in various Muslim countries invoke name of Islam to stem the tide of women's movement for better rights dubbing it as Western feminism.



Some Muslim countries like Pakistan and Bangladesh had or have women prime minister and some Muslim countries like Kuwait do not accord women right to vote. Such gross contradictions are really difficult to gloss over in the name of Islam. It all depends either on social conditions of that country or even on political exigencies.

When Fatima Jinnah tried to contest for the office of president in early sixties against Ayub Khan, the latter wangled a fatwa from the conservative 'ulama that a woman cannot become head of the state. They quoted a hadith from the Holy Prophet that if a woman becomes head of a nation that nation will face disaster. However, the supporters of Fatima Jinnah, which included head of Jama'at-e-Islami Maulana Maududi, approved of her contesting the president's election. They also managed to obtain a fatwa to this effect from a prominent 'alim like Maulana Ashraf Ali Thanvi who justified on grounds that in democracy the head of a state does not have absolute powers but depends on votes of members of parliament whose majority is of men.

All these political games ■■■ unfortunately played in the name of Islam rather than giving ■■■ rights due to them in a modern democratic society and which are not contrary to the teachings of the Qur'an. Most of the Muslim women in Islamic countries are not guilty of following 'Western feminism' but are agitating for their Islamic rights. The Taliban regime was the worst offenders in this respect. They not only followed the rigid Saudi laws but put more restriction than the Saudis do.

The Taliban who were essentially following tribal norms justified all that in the name of Islam. They did not even allow women to go out for schools and madrasas totally ignoring the famous *hadith* of the Prophet that seeking knowledge is obligatory both for Muslim men and Muslim women (Muslimah). The prophet separately mentioned Muslimah keeping in mind that soon after him the Muslim men would restrict women from acquiring knowledge. The Prophet used the word '*ilm*' which includes both religious as well as secular knowledge.

However, with few exceptions throughout medieval ages Muslim women were not allowed to acquire literary skills and reason was cited that learning reading and writing would corrupt them and they might write 'love letters' to strangers which is sin. Today no one argues on these lines and of course Muslim women

are acquiring secular as well as religious knowledge in public institutions. And this is no more considered as un-Islamic.

Thus what was considered un-Islamic until yesterday has become perfectly Islamic today and is accepted with good Islamic conscience by men in all Islamic countries. Many Muslim countries even permit co-education, which was great 'sin' until recently. Thus it can be seen that much depends not on Islam but on social dynamics, on medievalism or modernity, on orthodoxy or liberalism.

The man in male-dominated society in Muslim countries forgets that Islam ushered in its days a great revolution, which can be called feminist revolution today. It accorded equality to both man and women in various ways sometimes saying that "women have rights similar to those against them" (2:228) and sometimes saying "for everything men and women will be equally rewarded" (33:35).

But except for initial period of few decades Muslim women never enjoyed equality in the Islamic world. Soon, for various reasons, more and more restrictions were imposed on them. Though there was absolutely no place for monarchy in Islam, the institution of monarchy developed in the Muslim world within thirty years of the death of the Prophet and all feudal customs and traditions associated with monarchy came to be adopted by Muslim monarchs (though continued to be called caliphs for religious reasons) including severe restrictions on Muslim women. In other words all feudal practices were imposed on women in the Muslim world which continue until today.

Within hundred years after the beginning of the Islamic calendar she almost lost all her Qur'anic rights. Qur'an recognised her as legal entity and gave her all rights including contracting marriage, divorce, right to inherit, to have her own property, to earn and have her own income and to own her own business. But by the time the Umayyads consolidated their rule, all pre-Islamic traditions and customs were revised and also feudal traditions added to them thus completely subjugating women.

The Qur'an had required her to dress in dignified manner and conceal her sexual charms, the Muslim society put her under veil requiring to conceal her face completely. She could only peep through her two holes provided in the veil. This is no where the intention of the Qur'an yet this form of veiling is practised in many Islamic countries today.

She was confined to her house whereas during the Prophet's time and for quite some time thereafter she even took part in battles fought against non-Muslims. It is said that it was Umm Ammarah who saved the Prophet's life in the battle of Uhud. However, from Umayyad period onwards she was not even allowed to go out of home without her husband's permission after marriage and without her father's permission before that and that too accompanied by some male relative called *mahram* (a blood relation with whom marriage is not permissible like brother, uncle, etc.)

A *hadith* was also invented requiring her to be totally obedient to her husband and that *sajda* before husband would have been ordered had it not been prohibited for anyone except Allah. This *hadith* is reflective of the feudalisation of Islamic ethos. In other words women by then had lost her autonomy and what revolutionary changes and empowerment of women effected by the Qur'an were totally lost.

It would be interesting to quote here from a medieval text to show the concept of an ideal woman prevailing in that society. According to this medieval writer:

An ideal women speaks and laughs rarely and never without a reason. She never leaves the house, even to see neighbours or her acquaintance. She has no women friends, gives her confidence to nobody, and her husband is her sole reliance. She accepts nothing from anyone, excepting her husband and her parents. If she sees her relatives she does not meddle in their affairs. She is not treacherous and has no faults to hide, nor bad reasons to proffer. She does not try to entice people. If her husband shows his intention to performing the conjugal rites, she agrees to satisfy his desire and occasionally provokes it. She assists him always in his affairs, and is sparing in complaints and tears; she does not laugh or rejoice when she sees her husband moody or sorrowful but shares his troubles, and wheedles him into good humour till he is quite content again. She does not surrender herself to anybody but her husband, even if abstinence would kill her. Such a woman is cherished by everyone.

(See Shaykh Nefzawi, *The Perfumed Garden*. Tr. Richard F. Burton, New York, 1964, p-97). This is how a Muslim woman was pictured in medieval ages.

It is these feudal restrictions that we have inherited from our past and we glorify them as 'Islamic' and any deviation from it is

condemned as Western feminism. These restrictions are still practised in most of the Muslim countries because they still have not been democratised and women have no access to modern education. There is hardly any Muslim country, which has democratic governance. Either there is monarchy or military dictatorship or controlled democracy.

However, modernisation is also going apace and it is difficult for the rulers in Muslim countries to resist spreading of modern education among women. With more modern education spread among women and society becoming increasingly democratised, awareness for rights grows among them and they demand their rights either on Islamic or secular grounds.

It is interesting to note that while in several Muslim countries like Saudi Arabia and Kuwait women are demanding modernisation and political and social rights some women in Turkey are keen to go into *hijab*. In many non-Muslim countries also a section of Muslim women are taking to *hijab*. It is important to note the reasons for the

Though in general are demanding their rights in all countries some Muslim women feel proud to observe Islamic dress code. It is more for reasons of identity. Westernisation (which is not necessarily modernisation and one must distinguish between the two) has led to certain excesses in manner of dressing which violate sexual modesty as the whole emphasis is displaying feminine charms and body line rather than concealing them.

Today there is a feeling among the people in developing countries of Western culture assuming hegemonising role, which creates resentment. Globalisation has further strengthened the hegemony of Western culture and the people of developing countries have become quite conscious of their own culture and cultural practices. The Muslim women are also taking to their own cultural way of dressing to assert their cultural identity. *Hijab* should thus be seen as part of this process rather than a way of restricting women. Thus *hijab* today is part of visible cultural identity than anything else. However, this *hijab* should not be imposed and should not cover face to become restrictive. Wearing scarf or *chador* as Iranians call it, should suffice.

Such way of dressing should neither be imposed nor should it be opposed. In Turkey, a Member of Parliament was also not

and the *hadith* literature reflects medieval feudal ethos than the real Qur'anic spirit. There is, therefore, great need today for women theologian who could properly interpret and appreciate the Qur'anic            concerning women's rights.

This author has no hesitation in asserting that Qur'an is very assertive of women's rights and, if read carefully, it accords equal dignity and equal rights to both the sexes. However, this spirit of the Qur'an could be appreciated either by women theologians or men committed to women's rights.

## TRIPLE DIVORCE – NEED FOR CHANGE

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Recently several cases of on the spot triple divorce have been reported in the press. In Bihar a person pronounced triple divorce and threw out his wife just because she did not vote for the candidate of his choice. Again just a few days ago, a husband came drunk in Bhadrak, Orissa on 3<sup>rd</sup> June, and had a tiff with his wife and pronounced talaq thrice but in the morning he realised his mistake and wanted to take back his wife but leaders of the Muslim community separated them insisting that it is an irrevocable divorce and they cannot live together as husband and wife. Besides this many cases just go unreported.

There was report from Kerala that members of orthodox Sunni organisations have threatened to agitate if women are allowed to pray on Friday in the mosque. In the girls college in Manjeri students have been praying on Friday in the mosque on college premises. But the Samastha Kerala Sunni Students Federation (SKSSF) has launched a public agitation against women being allowed to pray on Friday in the mosque.

What such acts of triple divorce or agitations against women praying on Friday in the mosque convey to the world? Do women have secondary status in Islam? Is it sin to pray to Allah in mosque on Friday? What sort of Islam is this? How can Islam banish women from praying on Friday inside the mosque? For these orthodox Muslims customs and traditions are more important than the Qur'anic injunctions.

They do not know that Islam was the first religion in the world to empower women and give them equal legal status. The Qur'an clearly pronounces equality of sexes (see 2:228 and 33:35). Commenting on the verse 2:228, Maulana Azad in his *Tarjuman al-Qur'an* says that it is a revolutionary declaration of equality of sexes 1300 years ago. But the Muslim society under the influence of feudal social ethos never realised this revolutionary potential of Qur'anic teachings.

However, these old institutions developed under different social ethos cannot work today. The women are making fast strides in different fields of life. The extent of education and consciousness of their rights is far more widespread today than ever before. Even in conservative Saudi society the women are no more prepared to accept their traditional role. Recently, beginning on 12 June 2004 seventy Saudi Arabian scholars and intellectuals participated in the first day of third national dialogue forum in Madina to address the rights of women in particular prompt and full delivery of justice to women.

The overall theme of this three-day forum is women's rights and duties and their relation to education. Many women scholars read out papers in this forum to discuss ways to eliminate religious extremism in the Saudi Kingdom. In Madina the organisers hope to create an environment conducive for Saudi intellectuals and scholars to discuss the position of women in Saudi society and to find out the best ways to develop their status in line with Islamic teachings.

This clearly shows there is great deal of ferment among women even in the Saudi society. Women cannot be treated in the old ways any more. In India also Muslim women have become more conscious about their Islamic rights and are demanding changes in the Personal Law in keeping with the Qur'anic teachings. As pointed out the Islamic laws in relation to women are most modern in their approach but Muslim societies have preferred traditional interpretations by Imams in pre-modern feudal society to the clearly worded Qur'anic injunctions.

Talaq is a highly sensitive issue as it can break years of marital relations between husband and wife. Thus the Holy Qur'an is also very cautious in matters of divorce. Firstly, it has adopted most modern approach to this sensitive issue. It requires arbitration before any breach of relations. The Qur'an says, "And if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they both desire agreement, Allah will effect harmony between them." (4:35)

Thus, through arbitration the breach should be prevented and attempt should be made to bring them together again as Allah desires harmony. Despite such clear Qur'anic injunction we approve of triple divorce in one sitting and destroy marital life in one breath. How could such an act be Islamic? It is the greatest



injustice, specially with women. Again justice ('*adl*) is so central to Qur'anic teaching. And to throw one's wife by pronouncing three words of talaq is the most unjust act. There are three-four key words in Qur'an – '*adl, ihsan, rahmah and hikmah* (ie, justice, benevolence, compassion and wisdom) and triple talaq is against all these key words. Neither it is justice, nor it is benevolence (*ihsan*), nor is it compassion (*rahmah*) — is it — act of wisdom (*hikmah*).

All Muslims are also not unanimous on this form of divorce. Ahle-Hadith, Hanbalis and Shi'ahs reject this form of talaq. Even Hanafi Muslim countries like Jordan have reformed this practice and enforced the Quranic injunction of arbitration. Arbitration can and does save many marriages. The Qur'an does not permit triple divorce at all. Three talaqs has to be spaced over a period of three months so that husband and wife get enough time for reconciliation through intervention of relatives and friends. Moreover talaq can be given only when wife is in a state of *tuhur* ie, purity after menstruation. If talaq is pronounced during the period of menstruation it will not be valid. The Prophet has ordered wife to be taken back if the talaq is pronounced during menstrual period. Triple divorce disregards all this completely.

Some Muslim women have devised a standard *nikahnama* (marriage contract) strictly within the Shari'ah framework and given to the Muslim Personal Law Board a couple of years ago so that Muslim women do not face such situations. Since marriage in Islam is a contract such *nikahnama* is perfectly valid and was approved by a great '*alim* like Maulana Ashraf Thanvi. But the personal board is hesitating in implementing it. If implemented, it can give lot of relief to Muslim women. This is very modest piece of reform (in fact it is really not any reform or change but only a modicum of relief to suffering women) but the personal board is hesitating in implementing even this.

All '*ulama* agree that pronouncing triple talaq in one sitting is *bid'ah* (innovation) and that *bid'ah* is sin and yet this sinful practice is enforced in the name of divine law. In fact triple divorce indeed is a great sin as it so unjust and oppressive for women. Every possible attempt should be made to eradicate this sinful practice from our society. The '*ulama* who are guardians of Islamic law should play a leading role in this matter. I have had discussion

with many 'ulama who privately agree that this form of divorce should be abolished but do not have courage to say so publicly.

The personal law board should at least launch an awareness movement educating Muslim men about desisting from this sinful form of divorce and resort to the Qur'anic form of divorce as clearly spelled out. I am not aware of any such awareness movement. The Muslim men are Islamically illiterate and do not even know that triple divorce is a sinful form of divorce and Holy Prophet has strongly disapproved of this form of divorce. If the members of personal law board do not have courage to abolish this form of divorce they should at least have the courage to launch an awareness movement among Muslim men and appeal to them not to resort to such form of divorce.

Maulana Ashraf Thanvi and others had taken a bold step in 1939 and drafted the Dissolution of Muslim Marriage Act, which gave great relief to suffering women. Can the members of Muslim personal law board not show such wisdom and draft a comprehensive law codifying the Muslim personal law on the lines of the 1939 Act? It will give great and much needed relief to Muslim women.

However, there is no such sign of codifying the Muslim personal law and suffering of Muslim women continues. If Maulana Ashraf Thanvi and others could take such bold step way back in 1939 why can't our 'ulama in 21<sup>st</sup> century take such step? This will be not only in keeping with the true spirit of Islam but will also go a long way in improving the image of Islam in India. It is due to such un-Qur'anic practices that image of Islam has suffered and the demand for Uniform Civil Code surfaces.

The Islamic law is most progressive and in fact should become ■ model law for all others if our orthodox 'ulama care to understand and implement it in its true spirit. Maulvi Mumtaz Ali Khan, Maulvi Chiragh Ali, Justice Ameer Ali and others pleaded for reforms in late 19<sup>th</sup> and early twentieth century but nothing has happened so far.

Now it is for Muslim women to acquaint themselves thoroughly with Islamic law and launch a movement for reform and change. Women in all Muslim countries have struggled for change and succeeded. Now, ■ referred to above, even women in the

most conservative Saudi society have begun to assert themselves. It is therefore, high time that Muslim women in democratic society like that of India struggle for reform within the Qur'anic framework and win their rights guaranteed by the scripture.

That seems to be the only way left for them. Progressive and believing Muslim men should also come forward and support such movement for reform.

## AFTER ABOLITION OF TRIPLE TALAQ – WHAT NEXT?

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The Muslim Personal Law Board (MPLB) has taken bold decision to review practice of triple talaq at one go in its next meeting in July in Kanpur. The Board undoubtedly deserves congratulations from all those who are committed to women's rights and had been campaigning for this essential reform. Hundreds of Muslim women have suffered because of this pre-Islamic practice which, came back into Hanafi and Shafi'i Islamic law for reasons not to be gone into here.

It is unfortunate that the Sunni Barelvi ulama have threatened to launch an agitation if MPLB approves of abolition of triple divorce. They maintain that though it is *bid'ah* (ie, sinful form of divorce) nevertheless once pronounced thrice it is valid. They have stated nothing new. It was because of this view by the Hanafis that triple divorce was practiced so long in India though it was abolished in most of the Muslim countries. The Barelvi threat should not deter the members of MPLB from abolition of triple talaq though the Board would like to evolve a consensus on the matter. It would be better if the MPLB persuades the Barelvis to agree.

It would be better if such consensus is worked out as Barelvis are in majority and if they do not agree the abolition of triple talaq by the Board may not be very effective. An overwhelming majority of Muslims in India follow the Barelvi School. It is also important to note that unless it takes the form of legislation it may not be effective if triple divorce is challenged in the court of law.

Suppose, despite the MPLB abolishing it if someone pronounces triple divorce it will remain valid in the court of law unless it is abolished by law. Thus what MPLB has to do is to prepare a draft and give it to the government to enact it. And as we have pointed out in our last article (see *Secular Perspective* 16 to

30 June, 2004) such a precedent already exists and the Dissolution of Muslim Marriage Act was drafted by the ulama led by Maulana Ashraf Thanvi and others and enacted in 1939.

But if such an exercise is undertaken by the MPLB it has to be quite comprehensive. There is great need for codification of Muslim Personal Law today. It should be done ■ early ■ possible. What is known as Muslim personal law today, it is interesting to note, was known earlier as either Anglo-Mohammedan Law during the British period or simply Mohammedan Law and was enacted by the British. But after independence the terminology changed and the Anglo-Mohammedan Law, in order to wipe out its colonial stamp, came to be re-named as Muslim Personal Law. However, its contents did not change.

Thus mere change in its terminology was a political act, not a harbinger of social change as in other Muslim countries. To de-colonise its name is not enough, one must de-colonise its content as well. During the colonial period women were not supposed to play an active role in socio-political matters, at least among Muslims though there were exceptions like Bi Amma (Mother of Ali Brothers) and many other women who played important role in the freedom struggle.

But now 56 years after independence much water has flown down the Ganges and Muslim women are also in the forefront of many social movements. They are far more conscious today than they ■■■■ during the colonial period. It is after great deal of efforts that the MPLB has agreed to abolish triple divorce. Very important as this measure is, it is not enough. There is crying need for a comprehensive legislation to be drafted under the guidance of MPLB by the ulama and Muslim intellectuals and lawyers.

As I have often pointed out Islamic law is so progressive that it can become basis for ■ Uniform Civil Code. However, conservative Muslim society dragged the Qur'anic pronouncements to its own level and introduced, through human reasoning many measures, which curbed women's rights. Despite reforms in other Muslim countries women have not got full measure of equality, which the ulama theoretically concede. Iniquitous measures vary from country to country,

In Saudi Arabia, for example, women are not allowed to drive and they are jailed if they drive. In Kuwait until recently women

were not allowed to vote and had to wage struggle for years before this right was conceded recently. There is debate raging in Saudi Arabia as to why women cannot drive while they can drive in other countries. Obviously issues like driving and voting were not in existence in early Islamic period. It is the ulama in Saudi Arabia and Kuwait who, using their own reasoning imposed prohibitions on women. And now women are waging struggle in these countries against these measures and ulama are opposing it saying it is 'sin' for women to drive or vote.

In many other Islamic countries like Indonesia, Malaysia, Pakistan and Iran women drive and vote without any religious constraint. Qur'an is the only unanimous divine source for Muslims and it remains most progressive in respect of women's rights. Ideally it grants equality between man and woman and should be the main source of legislation regarding women's rights.

The past interpretations of the Qur'an were constrained by socio-economic conditions and should not be binding on the present and future generations of Muslims. All great Islamic thinkers have repeatedly made this point and have accepted the central role of *ijtihad* (creative interpretation). It is only our social conservatism, not lack of theological sanction, which prevents our ulama from exercising it.

The attacks on Muslim identity by the Sangh Parivar also have been one of the reasons for resistance to any change. These attacks may continue and demand for Uniform Civil Code persist and find legitimacy if there is no initiative for change. Its attacks may even continue after such initiative. Our initiative for change is not motivated or restrained by these attacks. It should be based on the merit for change. Muslim women should not suffer and should get justice.

My plea with MPLB and concerned Muslim intellectuals is to initiate measures for drafting a comprehensive law duly codified which will embody the Qur'anic spirit. Triple divorce and unregulated polygamy has often been the cause of attacks on otherwise quite progressive Islamic personal law. Polygamy may not be abolished completely but strictly regulated as directed by the Qur'an. In fact both the verses on polygamy ie, 4:3 and 4:129 should be read together to understand the real Qur'anic intent. Even the first verse ie, 4:3 requires rigorous justice to all wives and

ends by warning that 'if you cannot do equal justice then marry only one'.

The second verse ie, 4:129 makes it clear that equal justice is humanly impossible and do not leave the first wife in suspension. With such warnings polygamy should not be practiced unregulated. All other Muslim countries except Saudi Arabia and Kuwait have introduced strict measures to regulate it. Thus a draft law should introduce such regulatory measures and specify circumstances in which one could take second wife as has been done in Pakistan. Those circumstances could be when the first wife is terminally ill, or medically proved to be infertile or barren and that too with the permission of the first wife and the court of law.

Today, though by no means, polygamy is widely prevalent among Muslims (it is much more among Tribals, Dalits and upper caste Hindus), still one finds cases of desertion of first wife and marrying another without giving justice to the first wife. This should not happen and this is strictly prohibited by the Qur'an. The Qur'an permitted polygamy to help women in distress like widows and orphans, not to do injustice to them. It is the duty of the ulama to educate Muslims in this respect.

Thus there is crying need for a new draft law which the MPLB can draft with the help of Muslim lawyers and intellectuals incorporating all these changes and ask the government to enact it. If it is properly drafted I am sure, it will become ■ model law for others to follow ■ in Islamic law ■■■■■■ enjoy all the rights which modern laws have given to women like widow remarriage, compulsory arbitration before divorce, inheritance, right to property, right to earn and so on. And all these rights are unconditional and a wife also has right to lay down conditions at the time of marriage.

As such a law may take time since it is not easy to develop a consensus due to sectarian differences, the Board in the meanwhile should launch an awareness campaign against misuse of polygamy, etc. It should also see to it that the amount of *meher* paid is substantially high (part of which can be deferred) to discourage easy resort to *talaq*. The Qur'an itself encourages high amount of *meher*. And *meher* is woman's own untrammelled right. In case of divorce it can provide her with a measure of economic security. It is regrettable that in some Muslim communities *meher* is only nominal and as low as Rs 41 or Rs 51.



In all these matters MPLB can play an important role ■ it has come to be acknowledged an authoritative body and in ■ sense representative too. Though it is understandable that it cannot rush into things, it can certainly cautiously proceed further leading the way. If the women suffer after all half the umma suffers and Qur'an does not admit injustice in any case.

## **APPENDIX**

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### **AL-NISA (WOMEN) IV-CREATION, VERSE 1**

O mankind! revere your Guardian-Lord, who created you from a single person, created, of like nature, your mate, and from them twain scattered (like seeds) countless men and women; — revere God, through whom ye demand your mutual (rights), and (revere) the wombs (that bore you): for God ever watches over you.

### **SURAH 30: AL-RUM VERSES 20-21: ON CREATION AND EQUALITY**

(20): Among His Signs is this, that He created you from dust; and then — behold, ye are men scattered (far and wide)!

(21): And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are signs for those who reflect.

### **SURAH 39: AL-ZUMAR VERSE 6: CREATION**

(6): He created you (all) from a single person: then created, of like nature, your mate; and He sent down for you eight heads of cattle in pairs: He makes you, in the wombs of your mothers, in stages, one after another, in three veils of darkness. Such is God, your Lord and Cherisher: to Him belongs (All) dominion. There is no god but He: then how are ye turned away (from your true centre)?

**SURAH 53: AL-NAJAM**  
**VERSES: 44-45: CREATION/SPOUSES**

(44): That it is He who Granteth Death and Life.

(45): That He did create pairs—male and female.

**CHAPTER ■**  
**VERSES 32 AND 124: GENDER PARITY**

(32): And in no ways covet those things in which God hath bestowed His gifts more freely on some of you than on others: to men is allotted what they earn, and to women what they earn: but ask God of His bounty. For God hath full knowledge of all things.

(124): If anyone does one deeds of righteousness — be they male or female — and have faith, they will enter Heaven, and not the least injustice will be done to them.

**CHAPTER IX**  
**SURAH 9: AL-TAUBA**  
**GENDER RELATIONS AND EQUALITY**

(67): The hypocrites, men and women (have an understanding with each other. They enjoin evil and forbid what is just, and are close with their hands. They have forgotten God: so He Hath forgotten them. Verily the hypocrites are rebellious and perverse.

(68): God hath promised the hypocrites men and women, and the rejecters of Faith, the fire of Hell: Therein shall they dwell: Sufficient is it for them: For them is the curse of God, And an enduring punishment —

(71): The Believers, men and women, are protectors, one of another: They enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey God and His Apostle. On them will God pour His mercy: for God Is Exalted in power and wise.

(72): God hath promised to believers, men and women, gardens under which rivers flow, to dwell therein, and beautiful mansions in gardens of everlasting bliss. But the greatest bliss is the good pleasure of God: That is the supreme felicity.

**CHAPTER 24**  
**VERSE 26: GENDER PARITY**

(26): Women impure are for ■■■■ impure, and men impure for women impure. And women of purity are for men of purity, and

men of purity are for women of purity. They are not affected by what people say: for them there is forgiveness and an honourable provision.

### VERSES 35-36, 58 & 73

#### 33 GENDER PARITY

For Muslim men and Muslim women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for ■■■ and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity and for men and women who engage much in God's praise — for them has God prepared forgiveness and great reward.

It is not fitting for a Believer, man or woman, when a matter has been decided by God and His Apostle, to have any option about their decision: If anyone disobeys God and His Apostle, he is indeed clearly on a wrong path.

(58): And those who annoy believing men and women undeservedly, bear (on themselves) a calumny and a glaring sin.

(73): (With the result) that God has to punish the hypocrites, men and women, and the unbelievers, men and women, and God turns in Mercy to the Believers, Men and Women: for God is Oft-Forgiving, Most Merciful.

### CHAPTER VII VERSES 19-25

#### FALL FROM PARADISE

O Adam! Dwell thou and thy wife in the Garden, and enjoy (its good things) as ye wish: but approach not this tree, ■■■ ye run into harm and transgression.

Then began Satan to whisper suggestions to them, bringing openly to their minds all their shame that was hidden from them (before): he said "Your Lord only forbade you this tree lest ye should become angels ■■■ such beings ■■■ live forever."

And he swore to them both that he was their sincere adviser.

So by deceit he brought about their fall: when they tasted of the tree, their shame became manifest to them, and they began to sew together the leaves of the Garden over their bodies. And their Lord called unto them: "Did I not forbid you that tree, and tell you that Satan was an avowed enemy unto you?"

They said: "Our Lord! We have wronged our own souls: if Thou forgive us not, and bestow not upon us Thy Mercy, we shall certainly be lost."

[God] said: "Get ye down with enmity between yourselves. On earth will be your dwelling place, and your means of livelihood — for a time."

He said: "Therein shall ye live, and therein shall ye die; but from it ye shall be taken out [at last]."

## CHAPTER 4

### VERSE 34: GENDER ROLE — MEN'S SUPERIORITY

(34): Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient, and guard in (the husband's) absence what God would have them guard. As to those women on whose part ye fear disloyalty and ill conduct, admonish them (first), (next), refuse to share their beds (and last) beat them (lightly); but if they return to obedience, seek not against them means of (annoyance): for God is Most High, Great (above you all).

## SURAH II

### VERSE 222: MENSTRUATION

They ask thee concerning women's courses. Say: They are a hurt and a pollution: So keep away from women in their courses; and do not approach them until they are clean. But when they have purified themselves, ye may approach them in any manner, time, or place ordained for you by God. For God loves those who turn to Him constantly and He loves those who keep themselves pure and clean.

## AL-AHZAB-33

### VERSES 28-34: 33-PROPHET'S WIVES — INJUNCTIONS

Prophet! Say to thy Consorts: "If it be that ye desire the life of this world, and its glitter — then come! I will provide for your enjoyment and set you free in a handsome manner.

But if ye seek God and His Apostle, and the home of hereafter, verily God has prepared for the well-doers amongst you a great reward.

O Consorts of the Prophet, if any of you were guilty of evident unseemly conduct, the punishment would be doubled to her, and that is easy for God.

But if any of you that is devout in the service of God and His Apostle, and works righteousness — to her shall We grant her reward twice: and We have prepared for her a generous sustenance.

O Consorts of the Prophet! Ye are not like any of the (other) women: If ye do fear (God), be not too complaisant of speech, lest one in whose heart is a disease should be moved with desire: but speak ye a speech (that is) just.

And stay quietly in your houses, and make not a dazzling display, like that of the former times of ignorance; and establish regular prayers, and give regular charity; and obey God and His Apostle. And God only wishes to remove all abomination from you, ye members of the family, and to make you pure and spotless.

And recite what is rehearsed to you in your homes, of the signs of God and His Wisdoms: For God understands the finest.

#### VERSES 3-4: IV MARRYING WOMEN

If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess. That will be more suitable, to prevent you from doing injustice.

And give the women (on marriage) their dowry ■ a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer.

#### VERSES 19-25: IV-MARRIAGE,

(19): Ye who believe! ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dowry ye have given them — except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity.

If ye take a dislike to them ■ may be that ye dislike a thing, and God brings about through it a great deal of good.

(20): But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dowry, take not the least bit of it back: would ye take it by slander and ■ manifest wrong?

(21): And how could ye take it when ye have gone in unto each other, and they have taken from you a solemn covenant?

(22): And marry not women whom your fathers married — except what is past: it was shameful and odious — and an abominable custom indeed.

(23): Prohibited to you (for marriage) are: — your mothers, daughters, sisters, father's sisters, mother's sisters, brother's daughters, sister's daughter; foster-mothers (who suckled you), foster-sisters; your wives' mothers; your stepdaughters under your guardianship, born of your wives to whom ye have gone in — no prohibition if ye have not gone in (those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for God is Oft-forgiving, Most Merciful;—

(24): Also (prohibited are) ████████ already married, except those whom your right hands possess: thus hath God ordained (prohibitions) against you: except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property — desiring chastity, not lust. Seeing that ye derive benefit from them, give them their dowry (at least) as prescribed; but if, after a dowry is prescribed, ye agree. Mutually (to vary it), there is no blame on you, and God is All-knowing All-wise.

(25): If any of you have not the means wherewith to wed free believing women, they may wed believing girls from among those whom your right hands possess: and God hath full knowledge about your faith. Ye are one from another: wed them with the leave of their owners, and give them their dowry, according to what is paramour: when they are taken in wedlock, if they fall into shame, their punishment is half that for free women. This (permission) is for those among you who fear sin; but it is better for you that ye practise self-restraint. And God is Oft-forgiving, Most Merciful.

## CHAPTER IV

### VERSE 35: MARITAL DISPUTES

(35): If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, God will cause their reconciliation: for God hath full knowledge, and is acquainted with all things.



# CHAPTER 4

## VERSE 129: POLYGAMY

(129): Ye are never able to be fair and just ■ between women, even if it is your ardent desire: but turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding, and practise self-restraint, God is Often-forgiving, Most Merciful.

# CHAPTER 5: AL-MA'IDAH

## VERSE 5: LAWFUL WOMEN

This day are (all things) good and pure made lawful unto you. the food

Of the People of the Book Is Lawful unto you

And yours is lawful

Unto them

(Lawful unto you in marriage)

Are (not only) chaste women

Who ■ believers, but the chaste from among those who have been given the Book before you, when you give them their dowries, taking (them) in marriage, not fornicating nor taking them for paramours in secret.

# CHAPTER ■

## CHASTE WOMEN AMONG THE PEOPLE OF THE BOOK

(32): Marry those among you who are single, or the virtuous ones among yourselves, male or female: If they are in poverty, God will give them means out of His grace: For God encompasseth all, and he knoweth all things.

(33): Let those who find not the wherewithal for marriage keep themselves chaste, until God gives them the means out of His grace. And if any of your slaves ask for a deed in writing (to enable them to earn their freedom for a certain sum), give them such ■ deed if ye know any good in them; ye, give them something yourselves out of the means which God has given to you. But force not your maids to prostitution when they desire chastity, in order that ye may make a gain in the goods of this life. But if anyone compels them, yet, after such compulsion, is God oft-forgiving, most Merciful (to them).

## VERSES 226-237; 240-241: II DIVORCE

(226): For those who take an oath for abstention from their wives, ■ waiting for four months is ordained; if then they return, God is oft-forgiving, Most Merciful.

(227): But if their intention is firm for divorce, God heareth and Knoweth all things.

(228): Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what God hath created in their wombs, if they have faith in God and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have ■ degree (of advantage) over them. And God is Exalted in Power, Wise.

(229): A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness. It is not lawful for you (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by God. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by God, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by God; so do not transgress the limits ordained by God, such persons wrong (themselves as well ■ others.)

(230): So if ■ husband divorces his wife (irrevocably), he cannot, after that, re-marry her until after she has married another husband and he has divorced her. In that case there is no blame on either of them if they reunite, provided they feel that they can keep the limits ordained by God. Such ■■ the limits ordained by God, which He makes plain to those who understand.

(231): When ye divorce women, and they fulfil the terms of their (*iddat*), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage, if anyone does that, he wrongs his own soul. Do not treat God's signs ■ a jest, but solemnly rehearse God's favours on you, and the fact that he sent down to you The Book and Wisdom, for your instruction. And fear God, and know that God is well acquainted with all things.

(232): When ye divorce women, and they fulfil the term of their (*iddat*) do not prevent them from marrying their (former)

husbands, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in God and the Last Day. That is (the course making for) most virtue and purity amongst you. And God knows, and ye know not.

(233): The mothers shall suckle their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid ■ it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered ■ equitable terms. But fear God and know that God sees well what ye do.

(234): If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days: when they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And God is well acquainted with what ye do.

(235): There is no blame on you if ye make an offer of betrothal or hold it in your hearts. God knows that ye cherish them in your hearts: but do not make a secret contract with them except in honourable terms, nor resolve on the tie of marriage till the term prescribed is fulfilled. And know that God knoweth what is in your hearts, and take heed of Him; and know that God is oft-Forgiving, Most Forbearing.

(236): There is no blame on you if ye divorce women before consummation of the fixation of their dowry; but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means; — a gift of ■ reasonable amount is due from those who wish to do the right thing.

(237): And if ye divorce them before consummation, but after the fixation of a dowry for them, then the half of the dowry (is due to them), unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness. And do not forget liberality between yourselves. For God sees well all that ye do.

(240): Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence;

but if they leave (the residence), there is no blame on you for what they do with themselves, provided it is reasonable. And God is Exalted in Power, Wise.

(241): For divorced women maintenance (should be provided) on a reasonable (scale). This is ■ duty of the righteous.

#### CHAPTER 4 VERSES 128 AND 130: DIVORCE

(128): If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best, even though men's souls are swayed by greed. But if ye do good and practise self-restraint, God is well-acquainted with all that ye do.

(130): But if they disagree (and must part), God will provide abundance for all from His all-reaching bounty: for God is He that careth for all and is Wise.

#### VERSE 4: 33-DIVORCE

O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of *'Iddat* have ye to count in respect of them: so give them ■ present and set them free in a handsome manner.

#### SURAH 65: DIVORCE VERSES 1-7

1. O Prophet when you divorce women, divorce them at their prescribed periods, And count (accurately) their prescribed periods: And fear God your Lord: And turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness. Those are limits set by God: and anyone who transgresses the limits of God, does verily wrong his (own) soul: Thou knowest not if perchance God will bring about thereafter some new situation.
2. Thus when they fulfil their appointed term, either take them back on equitable terms or part with them on equitable terms; And take for witness two persons from among you, endowed with justice, and establish the evidence (as) before God. Such is the admonition given to

him who believes in God and the Last Day. And for those who fear God, He (ever) prepares a way out.

3. And He provides for him from (sources) he never could imagine. And if anyone puts his trust in God, sufficient is (God) for him. For God will surely accomplish His purpose: Verily, for all things has God appointed a due proportion.
4. Such of your women as have passed the age of monthly courses, for them the prescribed period, if ye have any doubts, is three months, and for those who have no courses (it is the same): For those who carry (life within their wombs), their period is until they deliver their burdens: And for those who fear God, He will make their path easy.
5. That is the Command of God, which he has sent down to you: and if anyone fears God He will remove his ills from him, and will enlarge His reward.
6. Let the women live (in 'iddat) in the same style ■ ye live, according to your means: Annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend ■ them until they deliver their burden: and if they suckle your (offspring), give them their recompense: And take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf.
7. Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what God has given him. God puts no burden on any person beyond what he has given him. After a difficulty, God will ■ grant relief.

## CHAPTER 24

(30): Say to the believing ■ that they should lower their gaze and guard their modesty: that will make for greater purity for them: And God is well acquainted with all that they do.

(31): And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their father, their father's fathers, their sons, their husband's sons, their brothers or their brothers' sons, or their sisters' sons, or their

women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! turn ye all together towards God, that ye may attain Bliss.

(60): Such elderly women as are past the prospect of marriage — there is no blame on them if they lay aside their (outer) garments, provided they make not a wanton display of their beauty: but it is best for them to be modest: and God is One who sees and knows all things.

(58): Ye who believe let those whom your right hands possess, and the (children) among you who have not come of age ask your permission (before they come to your presence), on three occasions: before morning prayer; the while ye put off your clothes for the noonday heat; and after the late-night prayer: these are your three times to undress: outside those time it is not wrong for you or for them to move about attending to each other: Thus does God make clear the signs to you: for God is full of knowledge and wisdom.

(59): But when the children among you come of age, let them (also) ask for permission, as do those senior to them (in age): thus does God make clear his signs to you: for God is full of knowledge and wisdom.

#### VERSES 53, 55 ■ 59: 33 PURDAH,

(53): O ye who believe! Enter not the Prophet's houses — until leave is given you — for a meal (and then) not (so early as) to wait for its preparation: but when ye are invited, enter; And when ye have taken your meal, disperse, without seeking familiar talk. Such (behaviour) annoys the Prophet: he is ashamed to dismiss you, but God is not ashamed (to tell you) the truth. And when ye ask (his ladies) for anything ye want, ask them from before a screen: that makes for greater purity for your hearts and for theirs. Nor is it right for you that ye should annoy God's Apostle, or that ye should marry his widows after him at any time. Truly, such a thing is in God's sight an enormity.

(55): There is no blame (on these ladies if they appear) before their fathers or their sons, their brothers, or their brother's sons, or their sister's sons, or their women, or the (slaves) whom their right

hands possess. And (ladies), fear God; for God is Witness to all things.

(59): O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): This is most convenient, that they should be known (as such) and not molested. And God is Oft-Forgiving, Most Merciful.

### **SURAH 70, VERSES 29-31: PURDAH**

And those who guard their chastity,  
Except with their wives and the (captives) whom their right hands possess, — for (then) they are not to be blamed.  
but those who trespass beyond this ■■■ transgressors:—

### **VERSES 15-16: IV- ADULTERY**

If any of your women are guilty of lewdness, take the evidence of four (reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death do claim them, or God ordain for them ■■■ (other) way.

If two men among you are guilty of lewdness, punish them both. If they repent and amend, leave them alone; for God is Oft-returning, Most Merciful.

### **SURAH 24: AL-NUR**

#### **VERSES 2-4/23: ADULTERY**

(2): The woman and the ■■■ guilty of adultery or fornication. Flog each of them with ■ hundred stripes: Let not compassion move you. In their case, in a matter prescribed by God, if ye believe in God and the Last Day: and let ■ party of the believers witness their punishment.

(3): Let no man guilty of adultery or fornication marry any but ■ woman similarly guilty, or ■ unbeliever: Nor let any but such a man or an unbeliever marry such a woman: To the believers such a thing is forbidden.

(4): And those who launch ■ charge against chaste women, and produce not four witnesses (to support their allegations)—flog them with eighty stripes; and reject their evidence. Ever after: for such man are wicked transgressors;



(23): Those who slander chaste women, indiscreet but believing, are cursed in this life. And in the hereafter: for them is ■ grievous penalty.

## CHAPTER 2

### VERSE 282: ON BEARING WITNESS

(282): O ye who believe! when ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: ■ God has taught him, so let him write. Let him who incurs the liability dictate, but let him fear his Lord God, and not diminish aught of what he owes. If the party liable is mentally deficient, or weak, or unable himself to dictate, let his guardian dictate faithfully. And get two witnesses out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if ■ of them errs, the other ■ remind her. The witnesses should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is justice in the sight of God, more suitable as evidence, and more convenient to prevent doubts among yourselves, but if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witnesses whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you. So fear God; for it is God that teaches you. And God is well acquainted with all things.

## CHAPTER

### VERSE 135: EVIDENCE

(135): Ye who believe! stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily God is well-acquainted with all that ye do.

## CHAPTER II

### VERSES 180-182

(180): It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest to parents and next to kin, according to reasonable usage: this is due from the God-fearing.

(181): If anyone changes the bequest after hearing it, the guilt shall be on those who make the change. For God hears and knows (All things).

(182): But if anyone fears partiality or wrong-doing on the part of the testator and makes between them (the parties concerned), there is no wrong in him for God is Oft-Forgiving, Most Merciful.

## CHAPTER 4

### VERSES 11-12-176: INHERITANCE

(11): God (thus directs you as regards your children's (inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth (the distribution in all cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God; and God is All-knowing, All-wise.

(12): In what your wives leave, your share is ■ half, if they leave no child; but if they leave a child, ye get ■ fourth; after payment of legacies and debts. In what ye leave, their share is ■ fourth, if ye leave no child; But if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or ■ sister, each one of the two gets ■ sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to anyone). Thus is it ordained by God; and God is All-knowing, Most Forbearing.

(176): They ask thee for ■ legal decision. Say: God directs (thus) about those who leave no descendants or ascendants as heirs. If it is ■ man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, who

left no child, her brother takes her inheritance: if there are brothers and sisters (they share), the male having twice the share of the female. Thus doth God make clear to you (His law), lest ye err. And God hath knowledge of all things.

## **SURAH II**

### **VERSES 178-179: RETRIBUTION/BLOOD MONEY**

(178): O Ye who believe! the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand and compensate him with handsome gratitude. This is a concession and ■ mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty.


(179): In the law of equality there is (saving of) life to you, O ye men of understanding; that ye may restrain yourselves.

**Note:** All these translations are by **Abdullah Yusuf Ali**.

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